

# Navigating financial legal problems in Victoria

Understanding help-seeking  
behaviour to enhance early  
intervention

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# Acknowledgements

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# Executive summary

## Why Justice Connect completed this research

Since this research began, debt enforcement and personal insolvency have persisted as common; year by year, and amidst the cost-of-living crisis, we see financial legal problems and demand for legal and financial community services continue to rise. **In 2023, 3,116 people in Victoria entered a new personal insolvency arrangement, and joined over 50,000 Australians currently navigating personal insolvency arrangements yet to be discharged.** These figures do not capture the full extent of legal need related to debt enforcement, and it can be expected that many more Victorians may lose their homes to alternative enforcement methods. We can also expect that many more Victorians are currently experiencing a journey to creditor enforcement; the national average of personal debt is outgrowing the national average of personal income, and the gap is widening the most for lower income earners.

This work emerged from Justice Connect's service provision to self-represented litigants in the Victorian County and Supreme Courts, and the Federal Court of Australia. Justice Connect's lawyers identified that **by the time matters reached the courts they were often entrenched, more complex, and already impacting the wellbeing of debtors and their families.** Once at court, self-represented litigants experience challenges navigating the process, and the legal options available to them are limited. Justice Connect's lawyers also identified, however, that **the legal problems they were seeing could have been resolved at a much earlier stage.**

Accordingly, **the following report explores what happens to a person living in Victoria and what does not happen with respect to timely intervention of community services,** such that a person experiences involuntary bankruptcy and its' other associated debt enforcement measures.

## The purpose of this report

This comprehensive human-centred report outlines the context, rationale, methodology, and findings of this 18 month-long research project, completed by researchers embedded in Justice Connect's Access Program. It reviews the knowledge held by service providers, academics, government bodies, and others held across Victoria about the state of financial legal problems, and explains how this knowledge influenced the strategy, tactics, and participant selection of the research design. It goes on to identify what was learnt, in the form of survey response findings and debtor archetypes developed from qualitative study of Victorians with lived experience of financial legal problems. It provides recommendations for the sector, which detail how services can expand access to early intervention support to Victorian debtors.

The research centred on the experience of its participants, and adopted a strength-based approach to making recommendations. This is demonstrated through participant stories and the synthesis of their experiences into archetypes to show the need for all services to be reflexive to the range of people in need of help.

While some of this research's findings confirm those from similar research, service evaluations, and public datasets, the conclusions of this report also differ from existing research and assumptions. In particular, this research found that there is widespread debtor demand for early intervention for financial legal problems. It identifies that help is being accessed too late, not because debtors do not wish to resolve their problems with help from experts, but because services are not sufficiently responsive to the needs, capabilities, and problems of debtors across Victoria.

Whilst it is not the focus of this report, researchers acknowledge the work done by others, including colleagues at Justice Connect, who are working hard to drive important change at the legislative and regulatory level to address bankruptcy in Victoria. This report focuses on debtor behaviour when faced with financial adversity and financial legal problems. It aims to inform service design across the legal and financial services sector and the development of better policy so that, together, services can better address common financial legal problems before they escalate to court.



## An overview of this report

**Part One** of the report introduces the context and approach of the research. It appraises existing literature, available personal insolvency statistics, and service provider feedback to provide a rationale for the research focus on certain priority groups and legal problems, and an overview of debt enforcement across Victoria.

**Part Two** of the report introduces the research participants and describes the research design, that is, the methods and resources researchers used to better understand how Victorians navigate financial legal problems, including how they search for help and what barriers they face that stop them accessing it in time.

**Part Three** of the report analyses survey responses provided by participants, with an emphasis on what survey participants told researchers about their legal problem experience and help-seeking journey. It reviews key insights arising from the survey and introduces thematic analysis. Key insights include:

- **Debtors search for help at the beginning of their legal problem.**
- **Debtors recognise a need for expertise to assist them to resolve their legal problem, but they're not sure what different kinds of professionals can do.**
- **Community is important to debtors, who utilise peer-to-peer navigation support when looking for help.**
- **Debtors that experience 'life events' before and during their legal problem are overrepresented in the cohort facing creditor enforcement.**
- **Debtors use many channels to find help, but overwhelmingly rely on online search engines.**

**Part Four** of the report considers what researchers learned about debtor behaviour over the course of a financial legal problem, with an emphasis on when and how debtors search for help. It introduces debtor archetypes and compares archetypical help-seeking behaviour with current-state service availability. Debtor archetypes represent the diversity in financial legal problem experience, debtor legal capabilities, and help-seeking experience.



- **A Model Debtor** is an imagined debtor for whom the current free legal help system works. They know when to look for help and they know how to find it. They are capable of acting on their own after receiving discrete, unbundled services, and are not discouraged when their applications for more assistance are declined.



- **The Surprise Respondent** is a debtor who realises they have a legal problem after they have accumulated an unmanageable arrears balance. This might be because they did not know they were liable for a debt, or because of poor legal and/or financial capability. This debtor exhibits a short window of help-seeking motivation and is quickly overwhelmed if they cannot find appropriate assistance. Their legal problem escalates quickly. Surprise Respondents sometimes access help via court referral processes but are at risk of passing under the radar of services, leading to poor outcomes.



- **The Repeat Player** is a debtor with more legal capability than most. They might have business experience, been before the courts before, or work in professional industries. They prioritise their personal networks, including their creditor, friends, family, or professional associates. They try to navigate the system by themselves, but the stress of their financial issue impacts their ability to resolve their legal problem alone. When contacting services, they are often ineligible despite their inability to afford paid services.



- **The Dogged Debtor** is highly motivated but lacks essential skills which support navigating the legal system and finding help. Their legal problem escalates while they search for help. This debtor is ineligible for most services they apply to, and are referred on. They are likely to experience the 'revolving door' of referrals between services. This debtor generally receives discrete assistance at some stage in their journey.



- **The Accidental Client** is generally referred for help with their financial legal problem after accessing a service for a different life event. The non-legal service is proactive at recognising the debtor's financial legal problem and makes an appropriate referral given the strength of their organisation's relationships. The Accidental Client is generally eligible for help and receives it in time.

**Part Five** of the report contains recommendations for improving early intervention support for financial legal problems and strengthening the provision of existing financial legal services. These recommendations are based on the findings of this research project and behavioural archetypes described in Part Four. They are aimed at creating a legal system which contributes to improved outcomes for Victorian debtors by leveraging their existing capabilities. Recommendations are designed to address the following themes identified as barriers to implementing early intervention for financial legal problems:

- **Reducing the referral roundabout.**
- **Responding to express demand by improving service visibility.**
- **Addressing latent demand by increasing awareness of financial legal problems and avenues to find help.**
- **Being client centric by adapting to client's legal capabilities.**
- **Reframing need to address pervasive service gaps.**
- **Increased resourcing for early intervention.**

**Part Six** concludes the report, summarising key findings, recommendation themes, and what the researchers hope readers take away and incorporate into their own work designing and providing services to Victorians with financial legal problems.

# Part One: An appraisal of existing knowledge

This Part of the report introduces the context and approach of the research. It appraises existing literature, available personal insolvency statistics, and service provider feedback to provide a rationale for the focus on certain priority groups and legal problems, and an overview of debt enforcement across Victoria.

## 1. Introduction

### 1.1 A 'working backwards' approach to defining common financial legal problems

As a Community Legal Centre, it is important that any learnings or recommendations developed through Justice Connect's research are relevant, actionable, and impactful for legal practice, as well as the practice of community service providers throughout Victoria. This research seeks to make a difference, and as such was designed to inform better service design and support the deployment of early intervention strategies. Given this focus, researchers sought to better understand how a person facing a common financial legal problem behaves in the early stages of problem experience, so that future services can be designed in line with, and existing services can adapt to, the ways people in Victoria respond to their legal problems and search for help.

To do so researchers adopted a needs-based approach to defining the research subject, working backwards from where existing data, literature, and service provider feedback identified the most acute financial legal need. This approach sought to identify which behaviours the research needed to understand, what priority legal issues these behaviours are triggered by, and which cohort of Victorians were experiencing these issues.

Through this approach and for the purpose of this research project, researchers focussed on financial legal problems related to unregulated and unsecured debt in circumstances where legal help or information is required to navigate, challenge, or understand enforcement action taken by creditors. The section below details what evidence underpins this focus. In Part Two, this report describes how this informed research design and was incorporated into research methodology.

## 2. What kinds of debt enforcement action are people in Victoria facing?

### 2.1 Involuntary bankruptcy: obscured and understudied

Most bankruptcies in Victoria are entered into voluntarily by debtors to manage an ongoing situation of personal insolvency. By lodging a 'debtors petition' with the Australian Financial Security Authority (AFSA), debtors initiate their bankruptcy without the consent of creditors and without court intervention (**voluntary bankruptcy**).

In contrast, a relatively small number of people are made bankrupt involuntarily, by means of a creditor's petition in situations where accumulated debts owed to a specific creditor exceed \$10,000 (**involuntary bankruptcy**). Perhaps by virtue of its relative size, there is a concerningly small amount of research about this cohort of people, their circumstances, experiences, and outcomes. Earlier research has noted that the prevalence of empirical findings as to positive outcomes for debtors following bankruptcy and the widely held view that bankruptcy provides relief in the face of spiralling debt, are misleadingly skewed towards the positive, because studies tend not to distinguish between voluntary or involuntarily bankruptcy in their selection of participants, research design, and reporting.<sup>1</sup>

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<sup>1</sup> Paul Ali, Lucinda O'Brien, and Ian Ramsay, 'Bankruptcy, Social Security and Long Term Poverty: Results from a Survey of Financial Counsellors and Consumer Solicitors', 44 Australian Business Law Review 144 (2016), p150.



While voluntary and involuntary bankruptcy lead to the same legal outcomes (including the sale of eligible assets, required contributions to the bankrupt estate, the application of bankruptcy annulment procedures, and permanent listing on the National Personal Insolvency Index (NPII)), they lead debtors into very different quality of life and health experiences. Where evidence as to the impact of involuntary bankruptcy can be separated from the larger set of data, a range of negative consequences become apparent, including the loss of secure living environments and other asset "lifelines", new or exacerbated infliction of trauma, and many other social and health related problems.<sup>2</sup> For many, involuntary bankruptcy leads to an ongoing cycle of negative consequences, destabilising life for many years and sometimes permanently. Being made involuntarily bankrupt is often described by those that experience it as "*the worst experience of their lives*".<sup>3</sup>

**For many, involuntary bankruptcy leads to an ongoing cycle of negative consequences, destabilising life for many years and sometimes permanently. Being made involuntarily bankrupt is often described by those that experience it as "*the worst experience of their lives*".**



By conflating voluntary and involuntary bankruptcy, negative outcomes for the latter group are obscured, with consequences for the allocation and direction of resources. There is a sector-wide lack of services available that *specifically* provide legal help with bankruptcy, and general capacity restrictions that limit the extent to which services that *can* help, do. Further, it causes regulators to overlook reform that could improve outcomes for people experiencing debt enforcement and to de-prioritise funding opportunities for assistance organisations seeking to intervene on behalf of this group of people.

## 2.2 A changing picture of debt enforcement in Victoria: warrants and debt agreements as emerging tools of creditor aggression

The Australian Financial Security Authority (AFSA)'s most recent figures indicate that personal insolvency levels continue to inch up toward the pre-COVID peak of 2019: in 2023, 3,116 people in Victoria entered into a new personal insolvency arrangement, and in 2024, monthly personal insolvencies have exceeded 200 every single month, for the first time since July 2020.<sup>4</sup>

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Further, service providers caution that the overall decrease in volume of involuntary bankruptcies since 2019 should not be taken as cause for celebration. Instead, creditors appear to be pursuing alternative debt enforcement methods that, while falling short of establishing a formalised situation of personal insolvency, generate similar outcomes to bankruptcy in material terms: garnishing debtors' take-home wages, selling debtor's property, and driving social isolation with consequences for wellbeing.

Service providers report that changing economic and regulatory conditions have driven creditors to pursue debt-recovery through other means, that are often more cost-effective than involuntary bankruptcy and avoid protracted litigation. They say that creditors are viewing involuntary bankruptcy as an increasingly ineffective and expensive tool to recoup monies owed: one service reported that large arrears balances accrued due to recent debt moratoriums, repayment pauses, and rising interest rates are motivating creditors to become more aggressive, lest property values decline or equity is eroded. In these instances, and for these reasons (among others), **warrants for possession or seizure or sale**, and

<sup>2</sup> Paul Ali, Lucinda O'Brien, and Ian Ramsey, '*Bankruptcy and Debtor Rehabilitation: An Australian Empirical Study*', 40 Melbourne University Law Review 688 (2017), p736.

<sup>3</sup> Ibid.

<sup>4</sup> For more information visit: [Monthly personal insolvency statistics | Australian Financial Security Authority \(afsa.gov.au\)](https://www.afsa.gov.au/monthly-personal-insolvency-statistics)

**debt agreements** are being seen as enforcement tools that enable creditors to recoup as much debt as possible, as fast as they can.

While much about the drivers of creditor behaviour remains unknown and is outside the scope of this report, proportionate changes in how creditors are enforcing debts should be taken as ever evolving. This research has identified, therefore, that service design and service expertise must be sufficiently responsive to the changing picture of Victorian debt enforcement.

## 2.2.1 Debt agreements and voluntary bankruptcy

A debt agreement is a legally binding act of bankruptcy, according to which creditors agree to recoup less than the total debt owed given commitment from the debtor to meet regular repayments over an agreed period of time. By entering a debt agreement, debtors provide grounds to their creditors to initiate bankruptcy proceedings, which may be acted upon in the event that the debtor does not comply with their obligations under that agreement.

Published personal insolvency data indicates that there is a weak positive correlation between debt agreements and involuntary bankruptcies. This suggests that an increase to the number of debtors entering debt agreement is not causally related to an increased frequency at which debtors are made involuntarily bankrupt, which might further suggest that creditors are not acting en masse upon their right to force bankruptcy in the event that debtors are defaulting on debt agreements.

While a strong correlation between debt agreements and voluntary bankruptcy can be seen in 2019-2021, more recent figures show that this correlation is weakening. Since 2021, both voluntary bankruptcy and debt agreements are being entered into less frequently, and voluntary bankruptcy is trending downwards at a faster rate. However, economic indicators and service provider insights offer no evidence to suggest that overall debt enforcement is in decline, and researchers believe the inverse is true. These findings suggest that the weakening correlation and overall decline in frequency is reflective of the trend away from personal insolvency as a debt enforcement measure, and that this change in volume is not a fall, but rather a redirection.

**The trend away from personal insolvency as a debt enforcement measure is not a fall in overall debt enforcement, but rather a redirection.**



## 2.2.1 Warrants of seizure and sale, and possession

A creditor that has been successful in obtaining a judgement for debt can apply to the Supreme or County Court of Victoria for a warrant of seizure and sale and/or a warrant of possession. If subjected to such an order, debtors may be deprived of property that provides for the debtor's housing needs, through the forced sale of the family home. Warrants represent accelerated processes of debt enforcement with less protection (or fewer opportunities for intervention) for debtors.

# 3. What kind of debt is leading to enforcement action for Victorians?

## 3.1 Unregulated and unsecured debt

Creditors continue to be economically motivated by the need (or want) to recoup arrears balances and other owed monies to the fullest extent allowed by the law.<sup>5</sup> Unsurprisingly, therefore, a strong indicator that a dispute over owed monies will escalate to court continues to be whether the debt is issued or owed to an unregulated provider and/or whether the debt is unsecured.

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<sup>5</sup> Notwithstanding the extent to which abuse of process by creditors, unfair contract terms, and unconscionable lending continue to be prevalent in debt enforcement.

'Regulated' credit refers to all credit issued by an organisation covered by the National Consumer Credit Protection Act (**NCCPA**) and includes mortgages, some personal loans, credit cards, and pay day loans. It does not apply to debts incurred due to non-payment for goods, services, or fees, or loans where no interest or other charges apply, such as buy-now-pay-later arrangements.<sup>6</sup>

Individuals with credit issued by regulated credit providers are afforded procedural rights by the NCCPA that constrain creditor behaviour in the event of default. Similarly, regulated credit providers are bound to notification requirements, communication and contract standards, hardship programs commitments, and must negotiate with debtors in good faith. Accordingly, disputes related to debt issued by regulated credit providers are often resolved through means other than litigation or personal insolvency, including negotiated payment arrangements and, where debt is secured, repossession. There are crucial exceptions to this general rule, however. Where debt is unsecured, regulated credit providers will not have recourse to repossession once they've seen through their various procedural obligations. Accordingly, they can, and often do, pursue involuntary bankruptcy as a measure of last resort.

Unregulated credit providers are not bound by the obligations established in the NCCPA. This means, for example, that loan agreements or contracts establishing the creditors' right to pursue the debtor for non-payment for fees are not necessarily consistent with best practice and may obscure the debtors' risks and rights with regard to debt recovery processes. Similarly, creditors are not obliged to negotiate before initiating litigation, nor must they engage with the debtor in good faith or make allowances for financial hardship. Service providers report that debtors facing enforcement action initiated by unregulated creditors or regulated creditors of unsecured debt are more likely to receive help late, as a result of accelerated enforcement and less time available to seek help, with consequences including fewer options for defending proceedings and worse outcomes.

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### 3.2 Smaller underlying debts

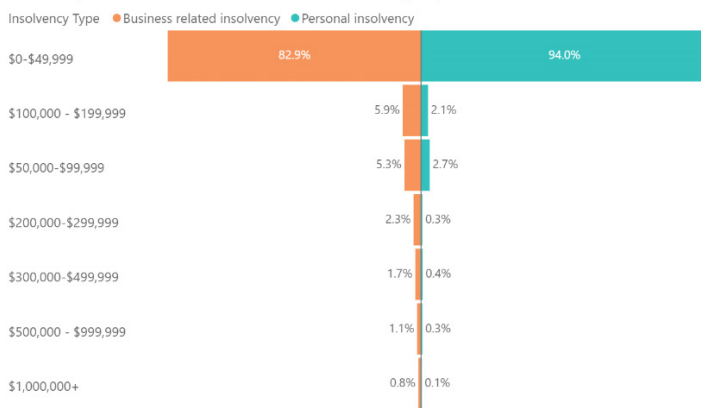
Research conducted with financial counsellors in Victoria notes that bankruptcy might be a preferred option for people where they have "a debt total [that is] close to or more than [they] ... would earn in a year"<sup>7</sup>. In the same research it was noted by a financial counsellor that if a person "does not have any assets and does not have [a] good income... and his total debts are more than \$106,000"<sup>8</sup> then bankruptcy might be a good pathway to relief.

<sup>6</sup> At the time of writing, draft legislation that would amend the NCCPA to bring buy-now-pay-later debt into the regulatory framework is undergoing review following a consultation period. To date, legislation has not been tabled.

<sup>7</sup> Above n 1, p149.

<sup>8</sup> Ibid.

**The vast majority of debts in bankruptcies (both personal and business related) are related to debts of less than \$50,000**



**Figure 1.1**

The Australian Financial Security Authority (AFSA) no longer publish data which provides a breakdown of the total debt held by individuals who have experienced bankruptcy. Figure 1.1 considers the most recent published figures, from 2018. It shows that the vast majority of individuals experiencing bankruptcy hold far smaller debts than the \$106,000 suggested by the above financial counsellor as a generalised model of when bankruptcy might be appropriate for their clients. Strikingly, 91.88 percent of total bankruptcies (forced and voluntary, personal and business related) were entered into by an individual with less than \$49,000 in unsecured debt.

Service providers report that people made involuntarily bankrupt occupy the lower end of this range and are presenting for assistance with significantly smaller debts than their voluntarily bankrupted counterparts, including underlying debt that is below the bankruptcy threshold of \$10,000. Almost uniformly, service providers have reported strategic use of the bankruptcy system by creditors who, through lower court litigation, succeed in pushing very small underlying debts above the bankruptcy threshold, with the adding on of legal fees or interest to judgement debts.

Moreover, and echoing financial counsellors, legal service providers report that they are unlikely to advise bankruptcy for clients unless no other option is available to them. Unlike financial counsellors, however, this calculation of options is often based not on income to debt ratios, but rather how advanced enforcement proceedings are. Accordingly, many Victorians are being advised to enter voluntary bankruptcy (or are facing forced bankruptcy) for debts significantly smaller than might otherwise warrant personal insolvency, due to a lack of timely advice. Where debtors present to service providers at the final stages of debt enforcement, there is often very little that can be done.

**Many Victorians are being advised to enter voluntary bankruptcy (or are facing forced bankruptcy) for debts significantly smaller than might otherwise warrant personal insolvency, due to a lack of timely advice. Where debtors present to service providers at the final stages of debt enforcement, there is often very little that can be done.**



There are, of course, anomalous exceptions reported by service providers and evidenced by Justice Connect’s service data. As commercial bankruptcies might be expected to follow the accumulation of very high business debts, individuals are often pursued for bankruptcy in the event creditors can demonstrate personal liability for commercial debts or as a consequence of the individuals’ actions during a company’s insolvency. However, this research found that these individuals are more likely to enter voluntary forms of personal insolvency prior to being forced by creditors.<sup>9</sup>

## 4. Which Victorians are facing enforcement of unpaid debt?

### 4.1 People with ‘more to lose’

Research from 2016 found that those who are made involuntarily bankrupt share distinctive financial and demographic attributes.<sup>10</sup> Generally, the involuntarily bankrupt:

<sup>9</sup> For more information visit: [Quarterly personal insolvency statistics | Australian Financial Security Authority \(afsa.gov.au\)](https://www.afsa.gov.au/quarterly-personal-insolvency-statistics)

<sup>10</sup> For more information, read Lucinda O’Brien, Malcolm Anderson, Ian Ramsay, “More to Lose: The Attributes of Involuntary Bankruptcy” (2019) Economic Papers 38(1).



- Hold more total debt than individuals entering other personal insolvency arrangements (i.e. debt in addition to the debt related to the proceedings, such as a mortgage).
- Report more than one source or type of debt.
- Own more assets, including real estate, than individuals entering other personal insolvency arrangements.
- Are often older, male, and have spouses and dependents.
- Often work in professional and managerial occupations.

This demographic cohort may have strong incentives to remain outside bankruptcy, in the hope of repaying debt with future earnings, retaining ownership of real estate including the family home, avoiding significant family upheaval, and maintaining their professional standing or reputation. As such, they might be more likely to resist personal insolvency or other earlier enforcement arrangements, increasing their vulnerability to involuntary bankruptcy at later stages of a debt dispute.

Justice Connect's more recent administrative service data related to personal insolvency supports these findings. Men between the ages of 40-70 who live in a house that they own are the largest cohort of people seeking help for personal insolvency matters. Justice Connect service data adds complexity to this image, however, by demonstrating that a majority of this group survive on very low incomes, earning under \$500 a week or \$26,000 per annum.

Moreover, in a situation of entrenched financial hardship as a result of a permanent low income, or due to an unexpected and drastic drop in income, this cohort's dependence on their owned family home for stability makes them particularly vulnerable in the event of bankruptcy, given the likelihood that they will lose it.

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Some typified examples of people we might expect to belong to this cohort include:

- Older people who have repaid their mortgage or hold significant equity in their home but are retired and reliant on Aged Pensions which do not keep up with rising cost of living.
- People impacted by sudden or serious illness (including their own, someone they provide care for, or someone whose income they rely upon) and subsequently lose income.
- People experiencing the breakdown of their relationship, and the loss of a partner's income or increased liability for a partner's debts.
- People impacted by job-loss, whether it be the sudden or unexpected loss of a job, or long-term or entrenched unemployment.

## 4.2 People with compounding vulnerabilities

In speaking to service providers, researchers learned of a widely held view: people in Victoria who experience certain non-financial vulnerabilities are overrepresented in the cohort of Victorians with financial legal problems, particularly victim survivors of family violence and coercive control, older people, and people from culturally and linguistically diverse (CALD) communities.

However, a legal service providers' own subscription to this view appeared dependent on the service model they provided help under and the breadth of their service's eligibility requirements. While generalist service providers reported an overrepresentation of people with compounding vulnerabilities

seeking help for financial legal problems, specialist services disagreed and instead put forward that financial legal problems appear to be indiscriminate, provided a person is facing financial hardship.

In considering what differentiated these services such that they could form such different opinions about the nature of legal need in their communities, researchers looked at their service models, the way that these models influenced who was making enquiries to the service, and how those enquiries were made. Generalist services reported that most of their clients with financial legal problems were referred to them by other local community organisations, which were often providing that client additional non-legal support. Alternatively, specialised services reported that they were more likely to receive enquiries directly from individuals, who either found them through their own search or upon the recommendation of frontline triage services such as the National Debt Helpline. This would indicate that the difference in opinions held by service providers as to the complexion of Victorian's facing debt enforcement action arose from a greater likelihood that a person with multiple or compounding vulnerabilities will access non-legal community support services, who will in turn refer that person for assistance from their local, generalist Community Legal Centre, than those without.

Researchers tested this hypothesis by analysing Justice Connect's service data, looking at the vulnerabilities experienced by clients and the method through which clients were connected with services. Helpfully, Justice Connect's service model intersects the generalist and the specialist; services from our Homeless Law and Seniors Law programs target groups experiencing specific vulnerabilities, while services from our Access Program operate under a broader, more general model. Reviewing one-to-one advice services provided from January 2022 to December 2023, a clear relationship between enquiry source and client vulnerability emerges. Of this group, the average client exhibits 2.8 vulnerability indicators (that is to say, is a member of 2.8 priority groups as defined by the Victorian Legal Assistance Strategy).<sup>11</sup> Broken down according to referral source, we see that referred clients, with an average of 3.1 vulnerabilities, exhibit a greater number of vulnerability indicators than their non-referred counterparts, with an average of 2.3.

**The average client exhibits 2.8 vulnerability indicators.  
Referred clients, with an average of 3.1 vulnerabilities, exhibit a  
greater number of vulnerability indicators than their non-referred  
counterparts, with an average of 2.3.**



Figure 1.2 considers referred clients only, broken down by type of referrer. It overwhelmingly shows that community organisations that deliver specialised services are more likely to refer clients with a greater volume of vulnerability indicators than organisations that are more general in nature. This appears particularly true for organisations delivering family and domestic violence, health and mental health, and housing services (highlighted below in dark green).

<sup>11</sup> For more information visit here: [Victorian Legal Assistance Strategy 2022-2025 | Department of Justice and Community Safety Victoria](#)



### Average of total vulnerabilities by enquiry referral type

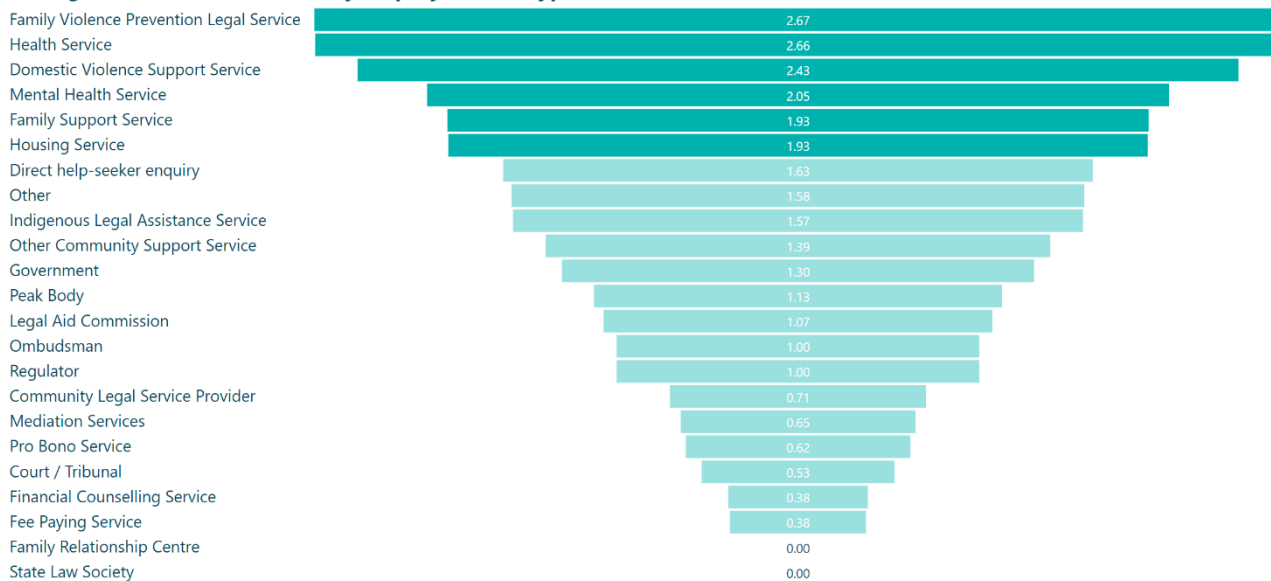


Figure 1.2

This evidence shows that certain cohorts of individuals are benefited by the strength of referral pathways that have been designed to connect identified priority groups with a range of community supports, including legal help. Considering this in the context of available personal insolvency figures in Victoria, not only are certain cohorts of individuals overrepresented in Justice Connect’s services, but they appear more likely to experience personal insolvency (and it can be inferred, other serious debt enforcement measures).

Comparing the geographic distribution of poverty and personal insolvency in Victoria, there is a moderate correlation (0.51). The absolute volume of personal insolvency is highest in the outer suburbs of greater Melbourne, particularly Wyndham, Tullamarine-Broadmeadows, Casey, Frankston, Brimbank, Melton, and Whittlesea-Wallan. However, adjusting for population, by considering the rate of personal insolvency per 1,000 people, regional centres come to the fore, with around one in 2,000 people from Ballarat, Bendigo, Geelong, and Mildura having entered personal insolvency in 2023.

**One in 2,000 people from Ballarat, Bendigo, Geelong, and Mildura entered personal insolvency in 2023.**



This means that in regions experiencing greater rates of financial disadvantage, we might expect to see greater rates of personal insolvencies. This correlation increases considering only the rates of poverty for women (0.53). It increases further, becoming moderately strong, when considering the rates of poverty for those over 65 (0.61).

This research identifies that certain cohorts are eligible for a greater number of free services than others, and that these services are skilled at proactively identifying legal problems and making the required referrals. It also recognises that there are certain vulnerabilities in addition to or outside of serious financial hardship that, when experienced, indicate a person is more vulnerable to personal insolvency. It appears, therefore, that both generalist and specialist service providers are touching on something true when reporting ‘who’ in Victoria experiences personal insolvency. Those with compounding vulnerabilities do, in greater numbers, access generalist services that in turn connect them with legal support. And, those in this group are marginally more likely to experience personal insolvency than those outside. However, there remains a large grouping of Victorians who may not be eligible for generalist services earlier in their journey but nonetheless experience sufficient financial hardship to end



up in a situation of personal insolvency. These clients are more likely to reach legal services themselves or after being triaged by a specialist organisation.

While the importance of these referral relationships cannot be overstated, given that well-functioning referral pathways are crucial to the timely resolution of financial legal problems, we know that this data is not telling the entire story. There remains a significant proportion of Victorians – those with compounding vulnerabilities and those without – who are not connected with legal or financial assistance in a timely manner.

**There remains a significant proportion of Victorians – those with compounding vulnerabilities and those without – who are not connected with legal or financial assistance in a timely manner.**



# Part Two: Methods and methodology

This Part of the report introduces the research participants and describes the research design; that is, the methods and resources used to better understand how Victorians navigate financial legal problems, including how they search for legal help and what barriers they face that stop them accessing it in time.

## 1. Understanding the journey to bankruptcy

This research examines the journey of debtors towards bankruptcy, starting from the point of debt accumulation. This journey encompasses all events, decisions, and interactions with creditors and the legal system experienced by debtors, which may or may not culminate in legal problems. The possible outcomes of this journey vary: the most severe is involuntary bankruptcy, but they also include other debt enforcement mechanisms. There are also circumstances where successful intervention by a service helps the debtor find a more satisfactory resolution.

By framing bankruptcy as a journey beginning at debt accumulation, this research makes a foundational claim: that any person, provided they experience a certain combination of financial strain, life events, non-financial vulnerability, misrepresentation, misunderstanding, or mistreatment regarding a loan or the law, can go bankrupt.

**Any person, provided they experience a certain combination of financial strain, life events, non-financial vulnerability, misrepresentation, misunderstanding, or mistreatment regarding a loan or the law, can go bankrupt.**



This research was designed to deepen understanding of these factors and of what debtors do at various points along their respective journeys. It seeks to know more about the behaviour of people who do, and do not, access legal help at the time it will have the greatest impact on the resolution of their legal problem, to inform service design with a focus on early intervention.

## 2. Using a mixed methods approach to investigate a wide range of variables

As researchers sought to investigate how people behave and engage with organisations, the research needed to be both inductive and investigative, employing both qualitative and quantitative methods. The dependent variable(s) were the likelihood of a debtor seeking help, and the timeliness of that help-seeking with respect to the escalation of their legal problem (**help-seeking behaviour**). The independent variables are represented in the Figure 2.1. Each collection of variables (including demographic variables, underlying debt variables, preparedness variables, and life event variables) were selected to represent the myriad of factors the researchers suspected were influential in a debtor's journey to bankruptcy. They were identified according to the researchers appraisal of existing knowledge around financial legal problems, as described in Part One.

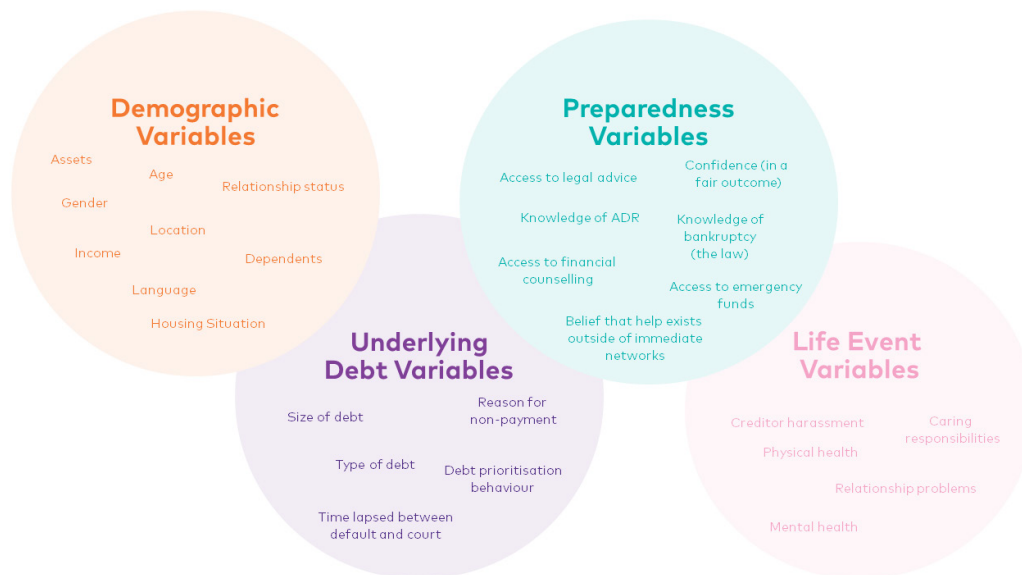


Figure 2.1

### 3. Research participants

#### People in Victoria with lived experience of financial legal problems

Researchers defined who could and could not participate in this research broadly, relying on a person’s self-identification as someone with lived experience of financial legal problems. Researchers used digital methods to invite people in Victoria, including former Justice Connect clients, to express interest in participating, provided they:

1. were an individual;
2. were over the age of 18;
3. were living (or formerly living) in Victoria; and
4. had experienced creditor-initiated enforcement action due to an unpaid debt in the last 5 years.

Responses were removed from our sample if they did not meet the above criteria.

Researchers invited 283 former Justice Connect clients and made the survey available to the general Victorian public. 32 people qualified to participate and were engaged through a survey, interview, service evaluation, or combination thereof.

#### Service providers in Victoria with experience providing legal and/or financial help with financial legal problems

Researchers proactively identified organisations well placed to contribute to this research and invited them to nominate representatives from their service delivery, strategic, and operations teams to be service provider participants. These organisations included specialist Community Legal Centres (**CLCs**), generalist CLCs, national and state peak bodies, financial counselling organisations, and court service providers.<sup>12</sup>

Researchers conducted semi-structured interviews with 20 service providers, employed by 9 organisations, who contributed in their professional capacity.

<sup>12</sup> We informally engaged with a working group of financial counsellors focussed on bankruptcy and academics at the University of Melbourne. Both of these groups provided us with essential, foundational knowledge about bankruptcy and the service landscape in Victoria but were not onboarded as formal participants.



## Mixed methods, mixed results: Challenges using digital strategies to recruit participants

The research team used digital consumer outreach strategies to recruit participants across Victoria, targeting regions and demographics we knew to be overrepresented in personal insolvency. Advertising directed people to a website containing information about our research and a link to a survey. Both the advertising and website confirmed that participants would be financially compensated.

Unexpectedly, one or more people that viewed the advertising maliciously targeted the survey, writing a code that was able to complete it over 13,000 times. Malicious survey responses provided were indistinguishable from real responses, demonstrating sophistication in qualitative reflections and consistency across quantitative responses. The malicious responses were able to bypass security measures installed, including phone and email verification requirements and a multi-stage participant screening and qualification process.

This represented a fundamental breach in the integrity of the data, and researchers had to consider all responses that were not independently verifiable as unqualified. In effect, the research had to start again, this time, using only offline outreach methods to recruit participants.

Justice Connect intends to publish a report explaining our use of digital strategies, the challenges faced, and the barriers (including ethical) that community organisations face completing research amidst an insecure digital landscape.

## 4. Human research activities

The approach to conducting research with both of our participant groups was participatory, design-led, and human-centred. Researchers combined quantitative survey and qualitative interviews with participatory design research techniques and usability testing approaches to capture participants' behaviours, needs, and preferences when engaging with services. The following human research activities are presented chronologically. Each activity was designed to be flexible and responsive to the learnings and outcomes of preceding activities.

### Service provider interviews

Researchers used semi-structured interviews to guide conversations with service provider participants. This format encouraged two-way conversation between service providers and researchers and allowed us to be led by service provider expertise and experience. Service provider interviews were designed to:

- Provide researchers with a greater understanding of the service landscape for financial legal problems, including the past, present, and future state;
- Understand what financial legal need trends were being observed by service providers; and
- Understand the factors that underpin each organisations' design and delivery of services for financial legal problems.

Following the conclusion of human research, all service provider participants were invited to attend a service design workshop to discuss preliminary findings and their implications for service delivery and design. Strong participation in this workshop drove additional insights, some of which have been included in this final report.

### Navigating Financial Legal Problems Survey

25 people in Victoria with lived experience of financial legal problems completed a survey about their experience of debt enforcement. The survey utilised extensive branching logic to capture specific details of each participant's journey, including enforcement strategies utilised by creditors, life events experienced by the participant, and services accessed. The survey was designed to:



- Provide a quantitative snapshot of the debts, demographics, and circumstances of the participant cohort;
- Gather quantitative and qualitative information about the help-seeking behaviour of the participant cohort; and
- Engage the participant cohort in a basic exercise of co-design, by asking participants to evaluate service interventions of varied intensities and engagement channels (i.e. face-to-face, online, physical media).

## Navigating Financial Legal Problems Interview

7 people in Victoria with lived experience of financial legal problems participated in a 2-hour interview about their experience of debt enforcement. Some interview participants were drawn from the existing pool of survey respondents and others were invited to participate in order to redress demographic and legal problem experience gaps in the existing participant pool. In both instances, interviewees were selected with breadth of life and legal problem experience in mind, to improve the representativeness of our participant cohort. Interviews were designed to:

- Deepen our understanding of our participant's journey through debt enforcement, with an emphasis on the sequence of events;
- Gather information about participant attitudes and approaches to help-seeking; and
- Engage the participant cohort in a strength-based exercise of service evaluation and service design.

## 5. Representativeness of the evidence base

### Experiences

The majority of the participant cohort are people in Victoria who received one or more services from Justice Connect in the last 5 years. Accordingly, it is reasonable to assume that any results are skewed in the direction of individuals who have exhibited some help-seeking behaviour, however small, in their experience of a financial legal problem. Whilst acknowledging this, it is important to note the nature of services received by participants and how this relates to the object of study.

All participants that received a service from Justice Connect accessed a clinic for self-represented litigants. These clinics maintain a physical presence in the County and Supreme Court of Victoria, as well as the Federal Court of Australia. The majority of this subset of participants accessed a clinic as 'walk-in' clients, or were referred to a clinic by court staff closely preceding their hearing date. Crucially, this means that these participants did not access a Justice Connect service as a result of proactive help-seeking.<sup>13</sup> As this report explores, the participant cohort exhibited a wide range of help-seeking behaviour at different times throughout their journeys. Their convergence at the later stages of these journeys at Justice Connect is not representative of homogeneity of experience, and researchers do not believe that the evidence provided by the participant cohort is misrepresentative of the Victorian population as a result.

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<sup>13</sup> This is not to say that clients did not search for help earlier in their journey, but rather that this earlier search is not what led them to Justice Connect. For more information, see Part Three.



### Respondents by Enforcement Type Experienced

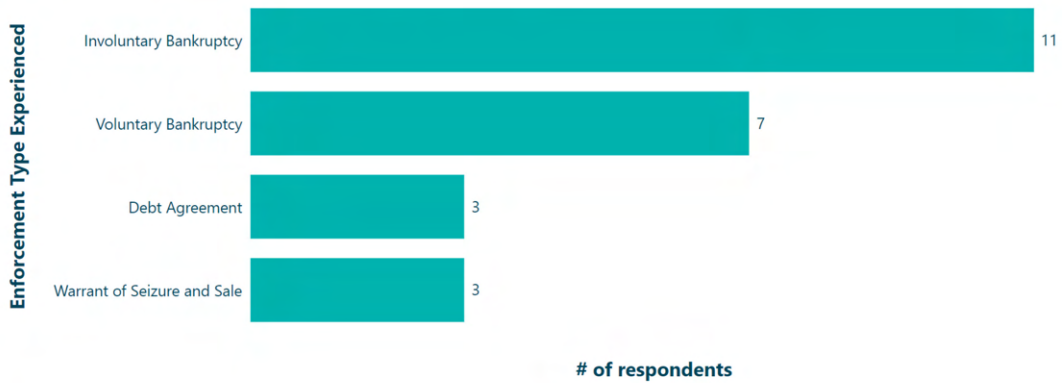


Figure 2.2

Most participants, even where they were connected with Justice Connect’s services, accessed help too late to avoid serious consequences. This is reflected in Figure 2.2, which details the enforcement mechanisms experienced by survey participants as a result of their financial legal problem(s). All survey participants experienced a form of personal insolvency or owned property that was subject to forced sale through an enforcement warrant.

### Gender

Figure 2.3 illustrates the identified gender of survey participants.<sup>14</sup> Personal insolvency data and Justice Connect client service data points to a more balanced distribution of financial legal problems according to gender compared to survey results, with men only marginally more likely than women to experience financial legal problems according to data sources other than our survey.

Participant survey results demonstrate a greater proportion of responses from women, with consequences for skewing survey data.<sup>15</sup> Researchers sought to correct for this through interview participant selection, by selecting men and women in equal measure.

### Respondents by Gender

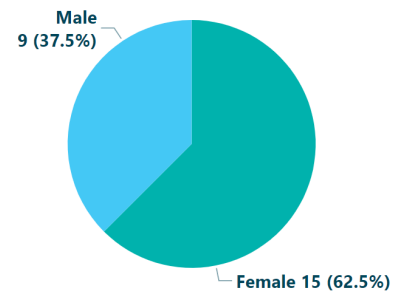


Figure 2.3

<sup>14</sup> Participants were not asked to provide their gender according to a binary gender model. No participants identified as non-binary, elected not to provide a gender, or preferred to self-describe their gender.

<sup>15</sup> This gendered survey response result is consistent with social research findings, which found that women are more likely to engage in online activity characterised by communication and exchanging information than other genders. Jackson L.A., Ervin, K.S. Gardner, P.D. & Schmitt, M (2001) Gender and the Internet: Women Communicating and Men Searching. *Sex Roles* 44(5), 363



## Age

### # respondents by Age at enforcement

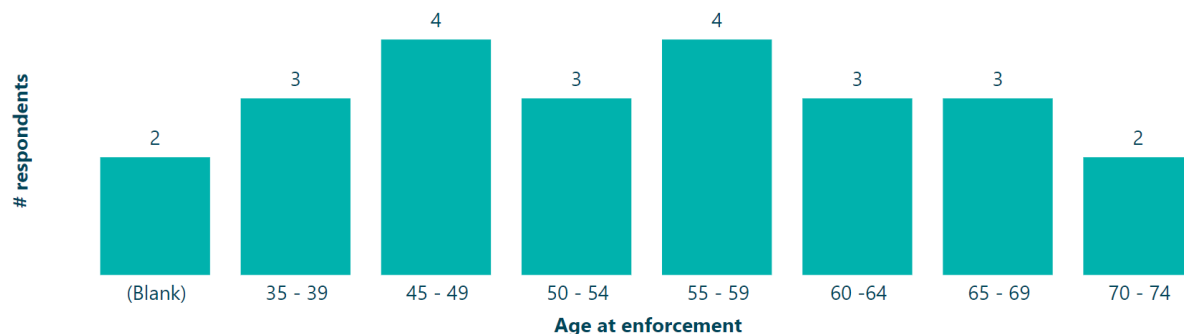


Figure 2.4

Figure 2.4 illustrates the ages of participants at the time that they experienced enforcement action initiated by a creditor. There is a reasonably consistent spread of ages across our participant cohort. The predominance of middle- to older-aged participants reflects what researchers understand about age distribution in personal insolvency data, as discussed in Part One, Section 4.

## Location of residence

Figure 2.5 illustrates the breakdown of survey participant location of residence, according to a binary split between metropolitan and regional areas.

2021 Census data published by the Australian Bureau of Statistics (ABS) shows that almost 80 percent of Victorians live in Greater Melbourne (i.e. in metropolitan areas).<sup>16</sup> Survey responses indicate a higher participation of people residing in metropolitan areas, but not to a considerable extent. That said, given the overrepresentation of people residing in regional centres in personal insolvency data, as explored in Part One, Section 4.2, interviews sought to emphasise ways in which the regional experience is distinct from the metropolitan despite the proportionately small demographic representation of regionally located individuals.

### Respondents Location of Residence

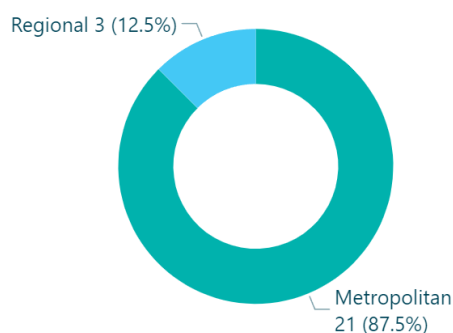


Figure 2.5

## Representativeness

Given the sample size, findings are illustrative of potential trends related to financial legal problem experience, with more research required to develop an evidence base that is statistically significant. However, as a predominantly qualitative study of help-seeking behaviour, research with the participant cohort has deepened existing knowledge as to how people in Victoria respond to financial legal problems and provides a solid evidence base from which to commence service (re)design.

<sup>16</sup> For more information, visit the Australian Bureau of Statistics website: <https://www.abs.gov.au/statistics/people/people-and-communities/snapshot-australia/2021>

# Part Three: Survey response summary

This Part of the report analyses survey responses, with an emphasis on what survey participants told researchers about their legal problem experience and help-seeking journey. This Part reviews key insights arising from the survey and introduces thematic analysis.

## 1. Introduction to survey responses

When interviewed, service providers offered their views as to why debtors in Victoria were not accessing timely support for their financial legal problem(s). Many reported that their clients were avoidant regarding their legal financial problem. Service providers suspected that during the early stages of their problem, many debtors would "*bury their heads in the sand*", ignoring the escalation of their debt issues and neglecting to search for help at the time when it would be most effective.

Participants told researchers a different story. Not only did most participants believe that help would be available to them as they navigated the escalation of their legal problem, but they reported that in the early stages of their debt issue they actively searched for a person or organisation that could help them. Most of the time they were unable to find one, or if they did find one, were unable to access their services.

This Part analyses survey responses to understand the disconnect between service provider and debtor experience. It highlights key findings as to when and how participants looked for help in the early stages of their legal problem, identifies common influences on legal problem emergence, and considers the impact these have on help-seeking behaviour. It also reports what happened to participants after failed attempts to obtain help early, and shares their reflections on what kinds of services they believe might have helped them resolve their legal problem, were they able to access them.

## 2. Legal problem emergence: early assumptions and early proactivity

Survey participants were asked a series of questions about the early stages of their legal problem, with an emphasis on what they thought, felt, and did when they first had difficulty paying their debt(s), before their creditor threatened or took any enforcement action against them. Proactivity in the face of uncertainty emerges as a key theme in answers provided, with survey participants demonstrating a strongly held motivation to resolve their problem at the time it emerged and before it escalated into something more serious.

**Proactivity in the face of uncertainty emerges as a key theme in answers provided, with survey participants demonstrating a strongly held motivation to resolve their problem at the time it emerged and before it escalated into something more serious.**



Participants were provided a list of assistance pathways and asked to select each that they utilised when they first had difficulty paying their debt(s). 96 percent of participants reached out to a professional (a financial counsellor, lawyer, accountant, private debt management company, or other community organisation), their creditor, or someone in their personal networks (such as a friend or family member) about their financial issue when it began.

Figure 3.1 illustrates the range of assistance pathways utilised by participants in the early stages of their legal problem. It highlights the extent to which help-seeking was prevalent amongst participants at this early stage; of the 23 participants that sought help, 20 participants spoke to a combination of professionals, people in their personal networks, and their creditor. Only one participant confined their search to their personal networks, and only two participants dealt solely with their creditor. Lawyers

were the most commonly considered professional, with 63 percent of our participants thinking about reaching out to a lawyer, and 50 percent making an initial enquiry.

### Number of respondents by help-seeking channel and diversity of channels used

Diversity of help-seeking ● Only Used this Channel ● Used Other Channels

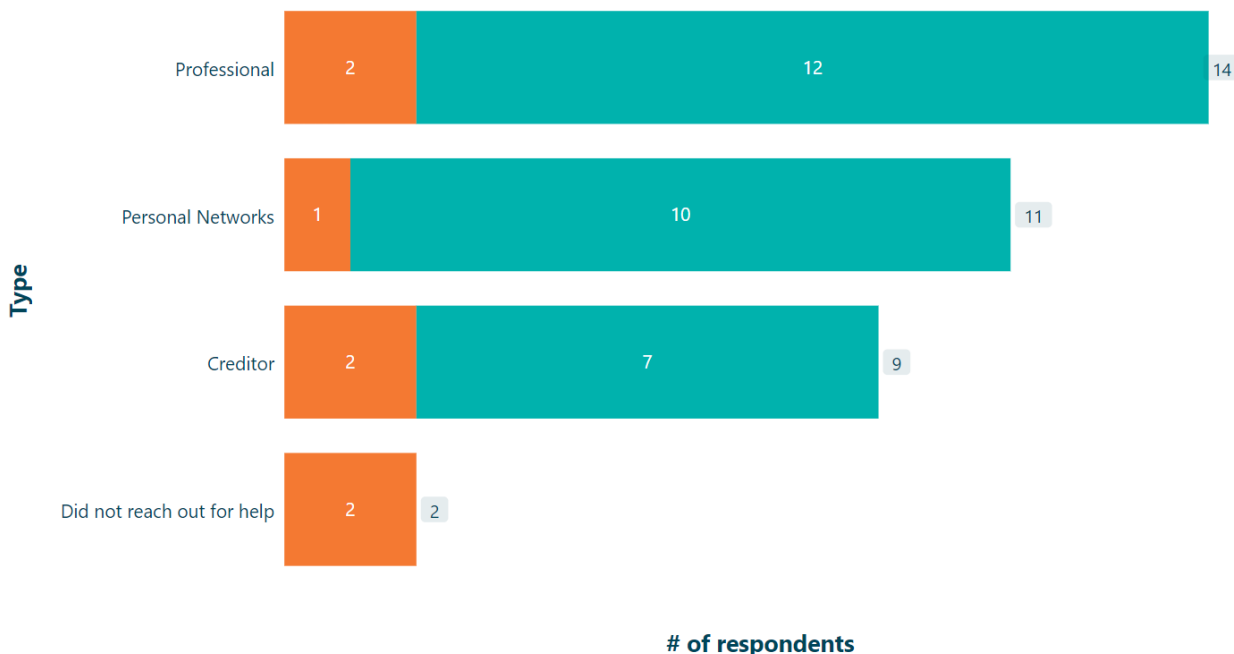


Figure 3.1

### Assumptions about service availability

Despite proactively searching for help, participants weren't sure that there would be help available to them: only 54 percent of respondents reported believing that there would be free help available to them outside their existing networks. Further, despite searching for help across a range of professional assistance pathways, participants were not always sure how different professionals would help them. Participants were provided with summaries of the services available from financial counsellors and lawyers in the early stages of a financial legal issue and asked to evaluate whether they, at the time, knew about the range of services available. Answers provided were mixed. Participants were split evenly with regard to financial counsellors, with 50 percent of participants reporting pre-existing knowledge as to what services they can provide. Awareness of the legal profession was slightly better, as 66 percent of respondents reported that they knew how a lawyer would be able to help them.

**Only 54 percent of respondents reported believing that there would be free help available to them outside their existing networks. Participants nonetheless recognised a need for expertise.**



It appears that despite uncertainty about what services are well placed to help someone at the onset of a financial legal problem, participants nonetheless recognised a need for expertise and were motivated to look for help, paid or otherwise, available or not, before things escalated.

## Assumptions about creditor behaviour

Participants were asked about how they engaged with their creditors when they first realised they would not be able to meet their debt repayment obligations. 50 percent of respondents demonstrated an awareness of hardship programs, reporting that they thought their creditor would have processes to help them manage the payment of their debt. However, 71 percent did not think that they had any rights to access these hardship programs, nor did they believe that their creditor was bound to any professional and/or regulatory standards with regard to managing debt arrears. Despite this 58 percent of participants told their creditor that they would not be able to pay their debts when they were due. Once again, participants demonstrate their likelihood to take proactive steps to resolve their problem, whilst being unsure or not believing that these steps will be of assistance.

**Ada** had been paying off a number of unsecured and unregulated debts with great difficulty for some time, and was relying on her friends and family to support her and her son as they experienced financial hardship. Ada had experienced financial abuse, committed by her ex-husband, and as a result found herself liable for a series of debts after their relationship ended.

Once she realised the extent of debt in her name, Ada started looking for help. At the beginning, she thought that she knew the ways that a lawyer or financial counsellor could help, but as time went on, she became less sure. Nonetheless, she reached out to financial counsellors, lawyers, local community organisations, friends and family, and her creditors. She struggled to find a service she could afford, telling us that upfront payment of fees were often required by the places she reached out to.

Ada used the internet, called services on the phone, and visited their offices but, despite her persistence, was not able to access a service before one of her creditors initiated legal action. Given her circumstances, Ada thought her creditors would help her and got in touch with them. She was not able to access any hardship support and legal proceedings continued.

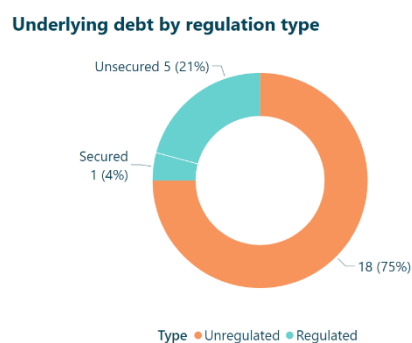
About her help-seeking, Ada said: *"I tried to contact every possible avenue, hoping that finally one would lead to [someone] who had the professional ability to help. The only issue with that is that I could miss out on the right help [because] I could not find out about them."*

## 3. Drivers of legal problem emergence

### Underlying debt

Participants were asked a range of questions about the underlying debt, the nonpayment of which was the subject of their legal problem.

As explored in Part One, Section 3, it might be expected that individuals with unregulated or regulated but unsecured debt are at greater risk of experiencing a financial legal problem than their counterparts with regulated and secured debts. As illustrated by Figure 3.2, this is certainly true of this participant cohort. 75 percent of participants' legal problems arose from non-payment of an unregulated debt. 21 percent of participants held regulated, but unsecured debts. Only 4 percent, or one participant's legal problem arose from a regulated debt that was also secured.



**Figure 3.2**

### Underlying debt by category of debt



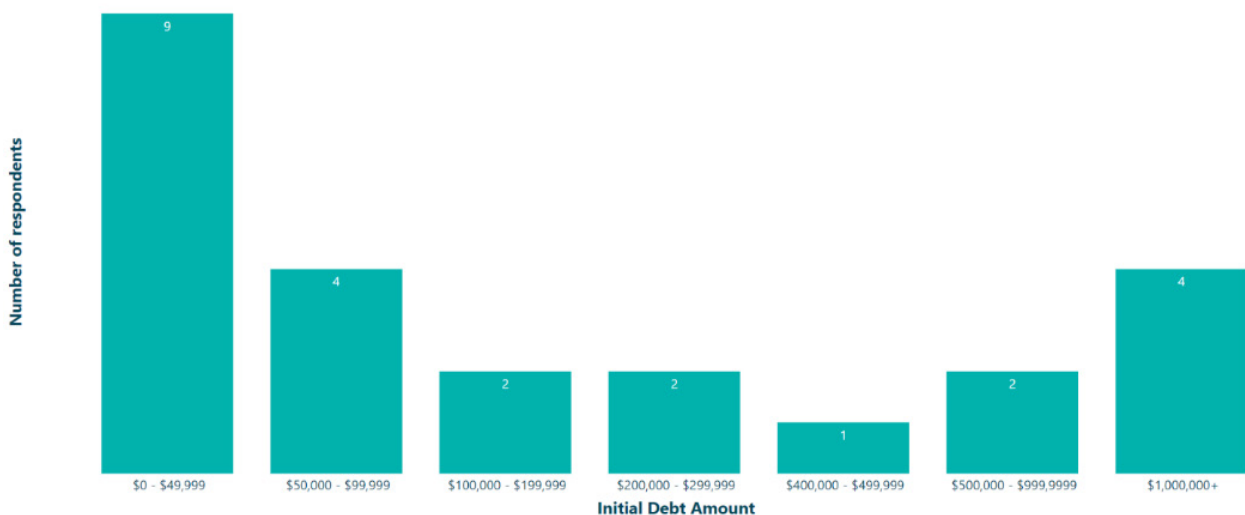
**Figure 3.3**

Figure 3.3 provides a further breakdown of the categories of debt from which participants' legal problems arose. Participants held debt in a broad range of categories. Notably, participants both entered into loan agreements (including business loans, credit cards, buy-now pay-later arrangements, personal loans, mortgages, and private financing) and had debt issued following their failure to discharge certain obligations or requirements (including legal fees, costs orders, tax debts, non-payment of invoices, and body corporate fees). This points to the myriad of scenarios and reasons why a person might find themselves with unmanageable debt, and highlights the broad variety in financial legal problem 'starting points'.

With regard to the size of participants' underlying debt, this cohort of debtors diverges slightly from the Australia-wide personal insolvency trends explored in Part One, Section 3.2. Figure 3.4 shows that, whilst debts under \$49,999 were the most frequently reported debt size amongst this participant cohort, larger debts are overrepresented as compared to Australian-wide figures. Importantly, however, 5 of 6 participants with debts over \$500,000 were subjected to misleading, deceptive, or improper conduct in the entering and service of their loans, including within the context of domestic violence and coercive control. Additionally, the participant group includes debtors that experienced enforcement action other than personal insolvency, and therefore captures a broader segment of people in Victoria with financial legal problems than that explored in Part One, Section 3.2. It might be reasonable, therefore, to expect to see some variance in the value of debt.

However, the participants' experiences affirm the Australia-wide finding that people who experience personal insolvency generally do so with small underlying debts. 72 percent of participants that experienced involuntary bankruptcy reported an underlying debt value of below \$49,999.

### Initial Value of Debt (by AFSA reported groupings)



**Figure 3.4**

Finally, Figure 3.5 highlights the variability in the emergence of participants' financial legal problems. 25 percent of participants knew very quickly upon entering the debt arrangement that they would be unable to pay it. Conversely, 21 percent of participants did not come to this realisation for over 2 years following the entering of a loan arrangement, suggesting that there was a considerable period of time during which their debts were serviced in accordance with its' terms.



# of respondents by Time to realisation of debt problem

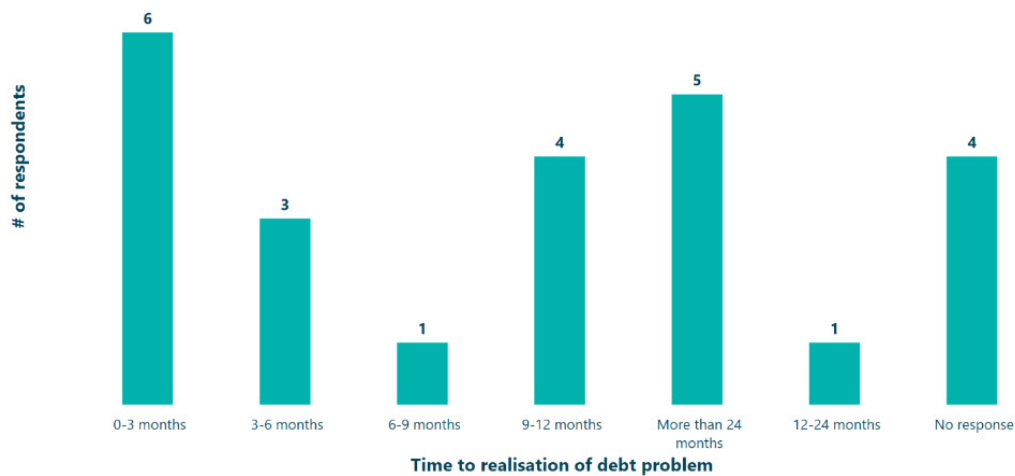


Figure 3.5

## Debt prioritisation

Survey participants were asked if, at the time of the onset of their financial legal problem, they had any other debts in addition to the one that led to enforcement action (or, for participants who entered voluntary bankruptcy, the debt that primarily drove that decision). 83 percent of participants reported juggling one or more additional debts.

**83 percent of participants reported juggling one or more additional debts.**



When interviewed, service providers noted that their clients were more likely to prioritise paying debts issued by regulated credit providers, particularly their mortgage, at the expense of meeting obligations associated with unregulated credit. It was suggested that this contributed to legal problem emergence, as debtors elected to default on unregulated debt to keep up with mortgage repayments, despite the fact that hardship and other protections are available from regulated credit providers. Accordingly, where participants identified having more than one debt, they were asked to identify which they were most concerned about paying.

While not a universal experience, answers provided by some participants affirmed this service provider hypothesis. Almost 50 percent of participants who were homeowners were most concerned about making mortgage repayments, despite no homeowners reporting that their mortgage was the object of their legal problem. Notably, 50 percent of participants who were prioritising their mortgage repayments were experiencing a legal problem related to a debt of \$10,000 or less. For these participants, the practice of prioritising mortgage repayments or handling mortgage arrears first rather than accessing hardship programs from their banks to free up access to funds to pay other debts, may have contributed to the worsening of their legal problem.

## Other life events

As explored in Part One, Section 4.2, analysis of personal insolvency data reveals that certain people experiencing vulnerability are overrepresented in the cohort of Victorians experiencing serious financial legal problems. To deepen understanding of the relationship between vulnerability and financial legal problems in the participant cohort, researchers took a slightly broader definitional approach to understanding vulnerability, and asked participants to identify whether they had experienced one of more 'life events' associated with vulnerability prior to, or at the onset of, their legal problem.

Participants were invited to report if, at the time that their debts became unmanageable, they experienced any of the following: a sudden or serious illness, an increase to caring responsibilities, mental ill-health, relationship breakdown, family violence or coercive control, the loss of their job, the loss of their main source of income (if their main source of income was not wages or salary), or retirement.

92 percent of participants reported at least 1 life event. 72 percent of this group reported that the life event(s) they experienced directly affected their ability to meet their debt obligations, and thus contributed to the emergence of their legal problem. The top five most experienced life events were mental ill-health, the loss of a main source of income, a sudden or serious illness, a relationship breakdown, and the loss of a job.

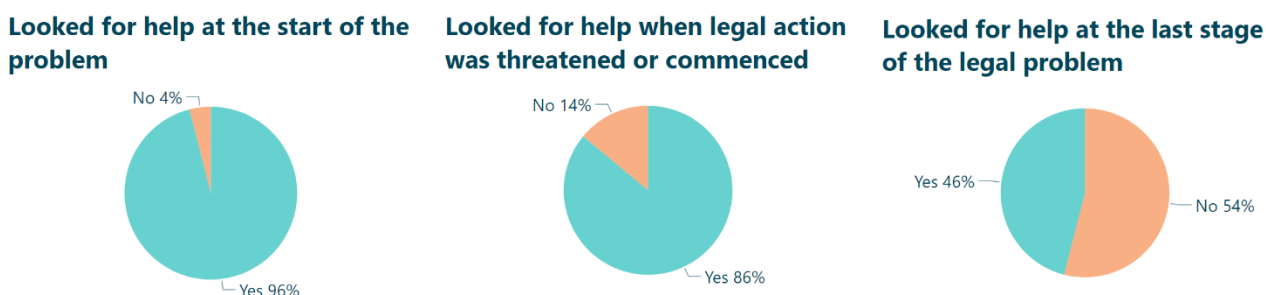
**92 percent of participants reported at least 1 life event.**



#### 4. Diminishment of help-seeking motivation over time

After telling researchers about when they first had difficulty paying their debts, and the decisions they made and steps they took to seek help at the onset of their legal problem, survey participants were asked about their actions at two later stages of their legal problem: when their creditors first threatened or initiated legal action in lower courts,<sup>17</sup> and when they experienced the final stage of enforcement.<sup>18</sup> Researchers hypothesised that debtors typically begin seeking help after their journey to bankruptcy is well underway, anticipating that this might explain why, based on the reports of interviewed service providers, debtors were presenting for legal and financial help with significantly escalated legal problems.

For survey participants, the inverse of this hypothesis was true, with their motivation diminishing over time. Figure 3.6 illustrates this finding. As explained in Part Three, Section 1, 96 percent of participants looked for help when they first had difficulty paying their debts. Then, when legal action was first threatened or taken in the lower courts, 86 percent of participants took action to try and resolve their problem by seeking help from a professional, someone in their personal networks, or their creditor. At the final stages of enforcement, only 46 percent participants looked for help. This 46 percent includes one participant that only sought help within their personal networks.



**Figure 3.6**

<sup>17</sup> Not all enforcement actions require lower court litigation. For instance, a debtor might declare voluntary bankruptcy or enter a debt agreement before litigation has been initiated. Or, a debtor might have already committed an 'act of bankruptcy', meaning their creditor does not need to seek an enforcement order in a lower court prior to initiating bankruptcy proceedings. Accordingly, how we phrased this question differed across reported enforcement types. These different questions approximate the "middle" of a financial legal problem or journey to enforcement.

<sup>18</sup> For debtors who experienced involuntary bankruptcy, we defined the final stage as beginning when they received a Bankruptcy Notice and ending when a sequestration order is made. For debtors who were subject to a warrant of seizure and sale or possession, we defined the final stage as beginning after orders were issued against them by a lower court and ending once the warrant was executed. For debtors who entered voluntary bankruptcy, we defined the final stage as beginning at the filing of a debtor's petition. For debtors who entered a debt agreement, we defined the final stage as beginning when a debt agreement proposal is lodged with the Australian Financial Security Authority.

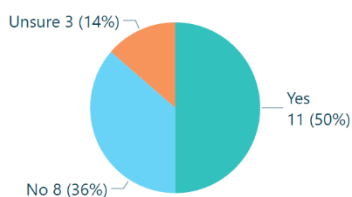


Importantly, this trend away from help-seeking cannot be explained by successful interventions from legal or other service providers resolving our participants' legal problems. Further, participants were becoming increasingly aware that their journeys were headed toward a legal cliff-edge, reporting increased understanding as to the seriousness and consequences of inaction, as illustrated in Figure 3.7. When they first had difficulty paying their debts, only 50 percent of participants knew the consequences of non-payment. Then, when legal action was first threatened or taken in the lower courts, 63 percent knew the consequences of not taking action to resolve their legal problem. At the final stages of enforcement, the proportion of participants that reported knowing the consequences of inaction rose slightly to 64 percent. While both this and the previous figure represent a majority of respondents, there remains a large minority of participants that remained unsure or unaware as their legal problem escalated.

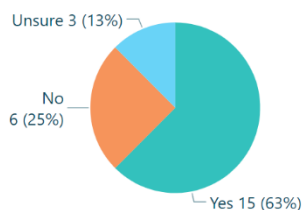
**Participants were becoming increasingly aware that their journeys were headed toward a legal cliff-edge, reporting increased understanding as to the seriousness and consequences of inaction. Only 50 percent of participants knew the consequences of non-payment at the start of their journey.**



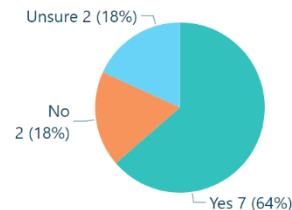
**Did you understand the consequences of non-payment of debt**



**Did you understand the consequences of non-action at the first stage of your legal problem**



**Did you understand the consequences of non-action at the final stage of your legal problem**



**Figure 3.7**

Amongst participants that reported knowing the consequences of non-payment or -resolution, researchers observed that they were generally correct in their assessment of what those consequences would be, identifying either the type of legal journey they were on or the consequences of reaching the end of that journey without help. Some of their excerpted assessments can be read in the box below.

**Survey participants' answers to "please tell us what you thought might happen, in the event that you did not act to resolve your legal problem?":**

- "Bankruptcy".
- "I might enter bankruptcy because the debt was so high it would have been impossible for me to pay".
- "[I would be] taken to court and debt [would be] reported on my credit file".
- "I knew I was facing potential bankruptcy".
- "[I would] lose my home".
- "I would be bankrupt".
- "My debts would be cleared through bankruptcy".



## 5. How were our participants connected with legal help?

### Help-seeking channels: online, over the phone, in-person

Survey participants that reported searching for help were asked to identify what access channel they used to look for it. Of this group, 70 percent of participants used the internet to look for help, 61 percent spoke to an organisation or person over the phone, and 39 percent looked for help in person. The frequency with which each access channel was used remained relatively consistent across the escalating stages of participants' legal problem.

**70 percent of participants used the internet to look for help, 61 percent spoke to an organisation or person over the phone, and 39 percent looked for help in person.**



Examining the use of multiple help-seeking channels as an indicator of search intensity, findings show that as legal problems got worse participants looked for help with somewhat greater intensity. As illustrated by Figure 3.8, whether participants used one or multiple channels at the onset and middle of their legal problem was relatively evenly distributed as compared to the final stage of legal action, where more participants utilised multiple channels to search for help.

### Respondents by Stage and Channel

Channel ● Multi-channel ● Single channel

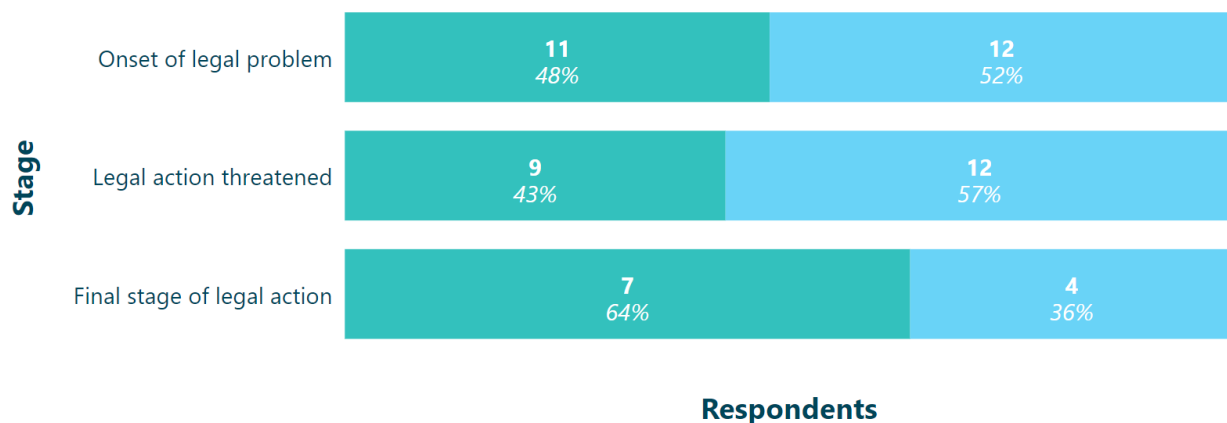


Figure 3.8

### The importance of community

Personal and community networks were important to survey participants throughout the duration of their journey to bankruptcy, but most acutely at the onset of their legal problem. 54 percent of participants spoke to their friends and family about their difficulty paying their debt(s) when they first realised, and 33 percent engaged community organisations to help.

### Non-legal referrer organisations

The survey explored the relationship between participants' experience of a life event and the resulting or co-occurring financial legal problem, specifically with regard to whether non-legal organisations provided (or could provide) a pathway into legal help for our participants, through referrals. Overwhelmingly, participants sought help when they experienced a life event, and, to a smaller but still significant extent, sought help for the impact of the life event on their financial situation. Further, a large minority of participants, when receiving help for their life event, were referred to financial



counsellors or lawyers. Clearly, the health of referral relationships between legal, financial, and other community organisations remains important to connecting debtors in Victoria with the appropriate help for their legal problem.

**The health of referral relationships between legal, financial, and other community organisations remains important to connecting debtors in Victoria with the appropriate help for their legal problem.**



The table below provides a breakdown of participants' help-seeking pathways after their experience of each of the five most frequently experienced life events amongst our participant cohort. It demonstrates that a slight majority of people across life events looked for help both generally and financially when one occurred, and the vast majority looked for either general or financial help. However, this varies by life event. Some were more likely than others to prompt participants to search for help, and the difference in volume between how many participants looked for both financial and general assistance, or confined their search to one or the other, varies across life events.

Life event	% of people who looked for both financial and general help	% of people who looked for any help	% of people who were referred to a financial counsellor or lawyer after accessing support for their life event
Mental ill-health	64%	79%	43%
Loss of income	56%	89%	33%
Relationship breakdown	63%	88%	38%
Loss of job	43%	71%	43%
Serious illness	57%	100%	29%

The table also illustrates how many participants were referred to a financial counsellor or lawyer after accessing support for their life event. While a minority of participants were appropriately referred across all life event types included, it is notable that after experiencing the loss of income or serious illness, less than a third of the relevant participants found general help-seeking to be a pathway to assistance for their financial legal problem. Conversely, help-seeking activity for mental ill-health was relatively intensive. A significant majority of people who experienced this life event looked for help and a majority sought support with regard to the financial aspect of their experience in addition to general support. Further, general services accessed due to an experience of mental ill-health were the most likely out of included life events to refer a participant to a financial counsellor or lawyer for help with their financial legal problem.



## 6. Looking backwards: what interventions would have helped our participants?

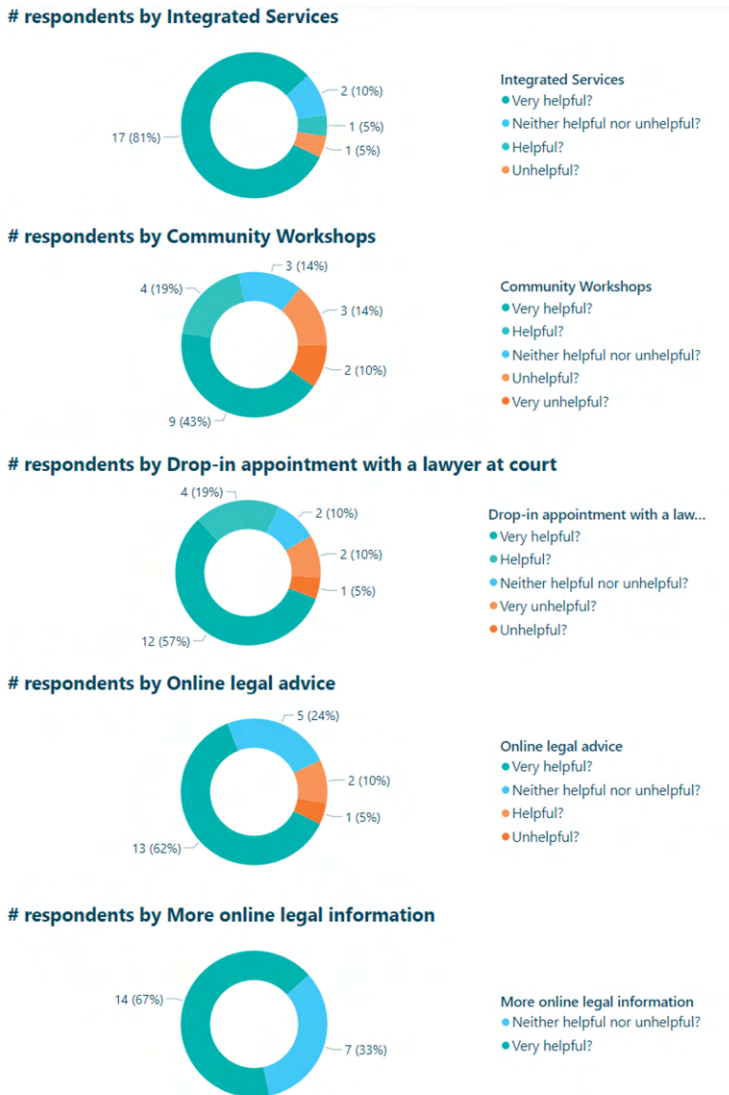


Figure 3.9

Researchers provided participants with a series of hypothetical legal services, targeted at providing early intervention support to prevent the escalation of financial legal problems, and asked them to evaluate their usefulness with the benefit of hindsight: did participants think that they would have helped them, in the event that they were able to access them early in their journey to bankruptcy? Figure 3.9 illustrates their responses.

Overwhelmingly, participants were positive in their assessment of each intervention. This reflects a key theme that emerged from the survey: any legal intervention, regardless of form, is seen as helpful by our participants.

**Any legal intervention, regardless of form, is seen as helpful by our participants.**



Highlighting the general desire to see an increase in the availability and accessibility of legal help, one participant said, "any help is good help when [you're] in debt... there is not enough free help available".

# Part Four: Debtor behaviour and its relationship to service availability

This Part of the report considers what the research has learned about debtor behaviour over the course of a financial legal problem, with an emphasis on when and how debtors search for help. It introduces debtor archetypes and compares archetypical help-seeking behaviour with current-state service availability.

## 1. Strength-based service testing and design

Researchers adopted a strength-based approach to researching financial legal problems and developing recommendations for effective early intervention strategies for financial legal problems. A strength-based approach utilises co-design methods to focus on the resources, skills, and strengths that consumers currently possess, leveraging their agency to develop future solutions.<sup>19</sup> For financial legal problems, this requires discerning what Victorian debtors currently do when facing unmanageable debts, the resources they already have, and the pathways they prefer or are inclined to use when searching for help. By understanding these factors, the problem we are addressing can be reframed and our strategies tailored accordingly. The problem identified in this research, therefore, lies in the way that services are currently designed and the aspects of service delivery that do not meet the express and latent financial legal need in the Victorian community early enough.

This Part incorporates three sources of knowledge: qualitative survey question responses, in-depth interviews with people in Victoria with lived experience of a financial legal problem, and the contributions of service provider participants, to understand what legal and financial services need to do in order to meet Victorian debtors on their own terms during the early stages of a financial legal problem. Simultaneously, it investigates ways to strengthen the connective tissue between services to ensure that where a Victorian debtor is unable to access early intervention services, they continue to have avenues available through which to have their needs addressed as their legal problem escalates.

## 2. Journey mapping help-seeking behaviour

To highlight key learnings about help-seeking behaviour, which are categorised into characters that exhibit archetypical behaviours, and how debtor behaviour relates to current-state service availability and design, this report utilises journey maps. Journey maps are illustrative tools, which highlight the steps that a person takes in order to achieve a particular goal from within an identified framework.<sup>20</sup> The journey maps are structured according to the steps that archetypical Victorian debtors take in each phase of their help-seeking journey and how they interact with available services. They identify the choices made within the context of the debtor's emotional experience, and the consequences for legal problem resolution outcomes.

This report first introduces the **Model Debtor**, from which the following archetypes diverge:

- **The Surprise Respondent;**
- **The Repeat Player;**
- **The Dogged Debtor;** and
- **The Accidental Client.**

It is important to note, and as is explored throughout, the journey maps do not and cannot capture the nuance and diversity of human experience. Not all debtors in Victoria will be represented by these archetypes. Nonetheless, the archetypes reflect the themes uncovered in this research and provide a basis from which to reflect on available services and begin designing new approaches.

<sup>19</sup> B Figueiredo et al, "Strength-based co-design that EMPOWERS" (2023) *Edinburgh Research Explorer*.

<sup>20</sup> T Howard, "Journey Mapping: A Brief Overview", (2014) *Communication Design Quarterly Review*.



### 3. What is a Model Debtor?



A Model Debtor is a debtor for whom the current free legal help system works. They are a hypothetical help-seeker who is imagined in response to what researchers have learned about the process of seeking and obtaining assistance for a financial legal problem, and considers what decisions, actions, and timelines are necessary for a person to be sure of the successful and timely resolution of their legal problem.

A Model Debtor is aware that once they experience difficulties paying their debts that this is the onset of a legal problem. They quickly begin a search for help, are capable of using communication tools such as the internet to find appropriate services, and making an application to a place that should be able to help them. Whilst waiting to hear back about their application, they review online self-

help information and can apply it to their situation, thus taking the necessary first steps. The Model Debtor accesses a discrete, unbundled legal service and is capable of acting upon the advice and recommendations they receive. A Model Debtor is unlikely to be affected by a life event that compounds the complexity of their legal problem or exacerbates the emotional strain they experience over the course of their help-seeking journey. After their legal problem is resolved, our Model Debtor becomes a peer navigator, using the knowledge they have gained throughout their journey to help other people.

The following journey map illustrates the Model Debtor's decision making over the course of their help-seeking journey. It is followed by a service alignment diagram, which highlights the ways in which the Model Debtor's journey is unrealistic and what barriers prevent a debtor from following the Model Debtor's journey in their own experience of financial legal problems. This diagram includes the words of participants, which describe what it is like to access services at each stage of a help-seeking journey.

**Ruth** did not have the same experience as a Model Debtor, but after resolving her problem on her own, her story helped **Naomi** resolve her legal problem quickly before it escalated.

Ruth was relying on Buy-Now Pay-Later credit to cover essentials in between pay cheques. After 3 months of meeting her repayment schedule, she found herself unable to pay after some unexpected expenses. Her creditors acted swiftly and sold her debt to a debt collector, who in turn commenced legal proceedings against her. Ruth knew about services like the National Debt Helpline, local financial counsellors, and Community Legal Centres, but she felt uncomfortable describing her financial situation and legal problem to a stranger. So, she turned to the internet for help and learned about Debt Agreements as an alternative to what she knew was coming – bankruptcy.

When, after experiencing a serious illness, Naomi noticed a Buy-Now Pay-Later company taking money out of her bank account outside of the normal schedule, she realised she had a financial problem. So, she turned to her family and friends for help. Speaking to Ruth, she learned about Debt Agreements and decided they were a good option for her too. Naomi was able to reach an agreement with her creditor before they took any action, and she did so proactively – by getting on the phone and proposing a payment plan to their hardship team.

# Model Debtor Help-Seeker Journey Map

A model debtor is a debtor for whom the current free legal help system works. They know when to look for help and they know how to find it. They are capable of acting on their own after receiving discrete, unbundled services and they are not discouraged when their applications for more assistance are declined.



Journey phases	Awareness	Consideration	Engage	Service	Outcome	Champion
Description of journey phase	The help-seeker becomes aware of a legal issue	The help-seeker considers their options of who can help	The help-seeker engages with an organisation to help	The help-seeker receives service, to help with their legal issue	The help-seeker resolves their issue	The help-seeker supports others to resolve similar issues

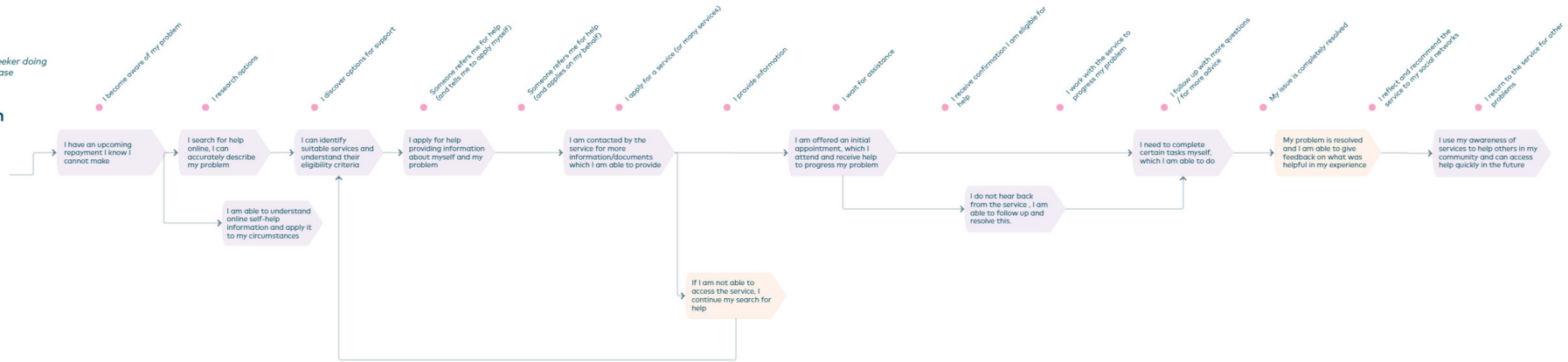
## Actions

What is the help-seeker doing throughout this phase

## Navigation



How someone travels along pathways to and through services

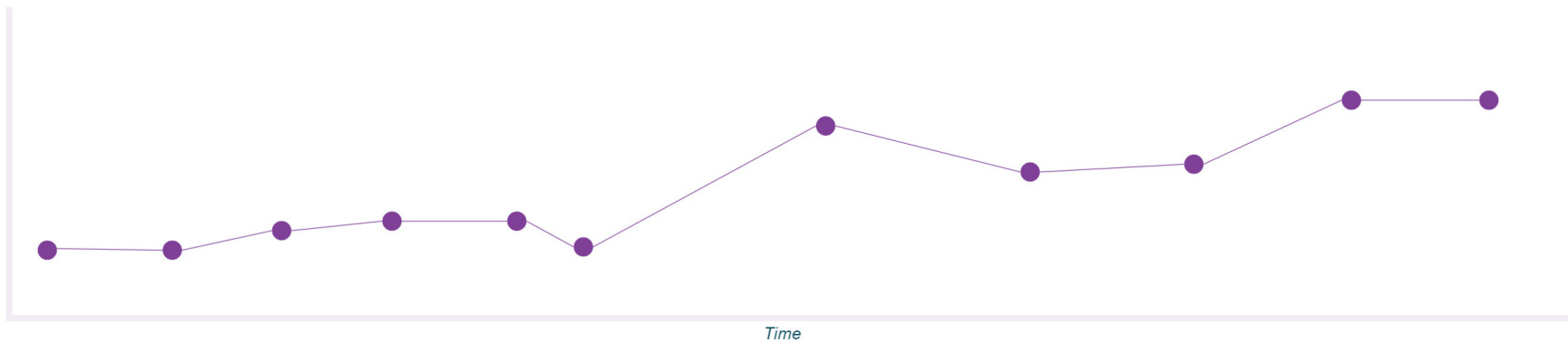


Positive emotions

## Emotional journey

A high-level capture of how the help-seeker feels throughout the journey, identifying painpoints and delight points

Negative emotions





## 4. The Model Debtor: legal capability and service alignment

The Model Debtor can be characterised as someone with relatively high legal capability. They exhibit important attributes influencing them to make several key decisions throughout their help-seeking journey, which enable them to successfully navigate the ecosystem of free legal help and resolve their problem.

### Legal knowledge

A Model Debtor realises that their difficulty paying their debt is a problem that lawyers or other professionals can help with. They know that the law is relevant to the content of their problem, have confidence that they have rights vis-à-vis their creditor, and are aware that there will be consequences if they take no action. Model Debtors are also able to parse through the aspects of their problem and identify which components relate to service provider offerings. By doing so, they can target their search to appropriate services.

Service providers report that it is difficult to reach debtors prior to the emergence of their legal problem. Prevention and awareness programs around debtors exist in Victoria but are not universally accessible. Moreover, outreach programs can be difficult to scale; service providers report that building strong community connections is possible in a defined locale, but increasingly difficult and resource intensive the broader the cohort and geographic regions targeted.

Service providers publish eligibility criteria online, which include the areas of law they can help with. However, debtors tell us that the criteria can be hard to understand, too general, and does not contain enough information about service exclusions. One participant told researchers that the websites of the services he looked at *"looked like marketing, not like instructions"*.

### Digital literacy

Model Debtors can use the internet to their advantage. They can access search engines and understand how to use search terms to generate helpful results. They can discern legitimate services from illegitimate or unhelpful websites.

Digital technologies, services, and information sources have become central to the navigation of legal ecosystems, and therefore essential skills in the resolution of legal problems. Most service providers advertise their services online and accept enquiries through digital technologies, including online tools and email. In the context of financial legal problems, accessing the internet safely is particularly important, given the proliferation of for-profit debt administration companies, predatory private lenders, and scams operating online. Service providers report that while digital technologies are important tools for increasing accessibility and reach, they *"can increase the vulnerability of the less savvy"*.

### Proactivity

Like 96 percent of survey participants, the Model Debtor is proactive and looks for help relatively close in time to the onset of their legal problem. Having realised that their difficulty paying their debt is a legal problem early, they begin taking steps to find help before it escalates.

Financial legal problem resolution can take time. It can be hard to find the right service and, once you do, wait times at legal services and for financial counsellors fluctuate according to demand. At the time of publication, they range from 1-6 weeks. Some financial legal problems escalate quickly, particularly those arising from unregulated credit. Service provider participants report that financial legal problem resolution is likely and achievable, through negotiation with creditors, but only if they can tackle it early.

### Motivation and resilience

Model Debtors are highly motivated and resilient. If they are declined a service by one provider, they will promptly look for another on their own or will follow cold referral information provided to them. They are also adaptable, and willing to receive a service that is different from what they had anticipated.



It is hard to find the right service. Service providers report that their eligibility criteria fluctuate according to their capacity and their frontline employees exhaust significant resources off-ramping ineligible help-seekers. As such, almost every help-seeking journey requires at least one referral: all of our participants that received a service were referred to the service they eventually received, if they accessed one, even in the event that it was not reported as part of their enquiry. The referral process can be frustrating for debtors, with participants frequently reporting feeling trapped in referral roundabouts.

## Responsiveness

Once their application is accepted, Model Debtors are responsive to service providers' requests for more information.

Legal services require help-seekers to perform tasks, such as gathering documentation, answering emails, filling in forms, and making calls. Many services are provided remotely, and wraparound case support is rare. At this point in service delivery, a debtor is expected to be experiencing heightened emotions, stress, and is potentially overwhelmed.

## Legal skills

A Model Debtor possesses legal skills. They can comprehend legal information and instructions, apply these to their own circumstances, and perform legal tasks that are required as a result.

Most services for debt matters in Victoria are discrete, with the exception of integrated services and ongoing casework, both of which are generally accessed by the very vulnerable. After receiving a discrete service, debtors will have to perform tasks, on the direction of the advice received and on their own. These tasks can include completing templates, negotiating with their creditor on their own, witnessing and filing documents with the courts, and self-representing. Additionally, while self-help resources are widely available for financial legal problems, they are general in nature. Debtors must interpret the information and apply it to their individual circumstances.

Most of the time, a financial legal problem will continue to escalate after a discrete service is provided. This might mean that interest is accruing, legal costs are awarded in favour of the creditor, or a creditor is unwilling to negotiate. It can be difficult to understand the difference between and liability for principal and interest debt, and it can be difficult to interpret court orders.

## Reciprocity

A Model Debtor provides feedback after receiving a service and uses the knowledge, skills, and motivation they have developed over the course of their legal problem to help others.

Legal services rely on feedback from clients to support the iteration of their services and to adapt to changing needs and environments. Service providers report that most debtors do not provide feedback and often do not let them know the outcome of their legal problem following a discrete service.

54 percent of our participants report a strong reliance on their community in the early stages of their legal problem, and turn to family, friends, and peer navigators to ask for help. Accumulated community knowledge about managing debt, the consequences of non-payment, and what to do in the event of creditor enforcement can be influential in the resolution of future legal problems.

## 5. Archetype One: The Surprise Respondent



The Surprise Respondent is a debtor who realises they have a legal problem after they have accumulated an unmanageable arrears balance and legal action is threatened. For participants, this occurred because:

- **They did not know they were liable for the debt.** In the context of family violence and/or coercive control, victim-survivors may be liable for their partner's debts, having been forced or misled into co-signing loan agreements, acting as guarantor, or taking out debt in their names to be used or serviced by someone else. Many participants who reported experiencing family violence and/or coercive control learned of their liability for debt only after creditors began acting against them or their relationship ended. Another participant experienced coercion within the context of a business partnership and learned of her liability for a debt that she had provided a personal guarantee for only when her and her business partner's relationship broke down.
- **They had poor financial and/or legal capability.** Many participants that align with the Surprise Respondent archetype accumulated large arrears balances without understanding their obligations under a loan agreement. Recent migrants to Australia and participants who speak a language other than English at home were overrepresented in this cohort. Having not understood their loan agreement, these participants do not understand their obligations to pay according to an established schedule and do not realise they are in default until legal action is taken.
- **They were issued an unregulated debt:** Many unregulated debts are issued with payment required in full. These debts can come by surprise or if anticipated, are often larger than expected. Body Corporate fees and special levies are common examples, as are council rates, fees for services performed, and private loans. For these debtors, the acquisition of debt coincides with the realisation that they cannot pay and the onset of their financial legal problem.

Surprise Respondents typically exhibit a short window of help-seeking motivation. Despite proactively searching for help once they realise that they have a legal problem, the stress of their situation causes them to become overwhelmed if they cannot access a service quickly. As a result, they abandon their search for help.

Their legal problem has started to escalate already, and without help key dates approach quickly. Surprise Debtors receive important communications about upcoming court action but are likely to avoid engaging with creditors or re-commencing a search for help. As their court date approaches, the Surprise Debtor contacts the court in which their matter is being heard and asks a question about procedure. They are not sure yet whether they will attend their hearing and might seek to find out a bit more about what court is like. Once identifying that they are self-represented, court services may make a referral for legal or financial help, to duty lawyers and financial counsellors. If the Surprise Debtor can access this service, they have a chance at problem resolution. However, Surprise Debtors are particularly at risk of not attending court and having default judgement awarded against them. Many Surprise Debtors end their financial legal problem journey at bankruptcy.

Surprise Respondents are likely to become peer navigators after their legal problem is resolved or after they are declared bankrupt. They have a strong sense of injustice and, having seen their problem escalate to the highest degree, they want to help others access services earlier than they did.

The Surprise Respondent Help-Seeker Journey Map provides further detail about this archetype's help-seeking behaviour and legal problem experience.

**Maryam** is one participant from whom the Surprise Respondent archetype was developed.

Maryam was liable for more than \$20,000 credit card debt. She had not accumulated the debt herself, but rather, the cards were used by her husband and other family members without her express consent. She felt pressured to take the cards out in her name and to let other people use them. Her husband had been meeting repayment requirements for some time. But, one day, Maryam started to get calls from debt collectors. Asking her husband what was happening, Maryam was told that he would not help and that the cards were "*her responsibility now*". He suggested that if she could not pay them, that she should declare bankruptcy.

Maryam was a stay-at-home mum and did some occasional admin and accounting work for her friends and families' businesses. She relied on her husband for money and definitely couldn't afford to pay the credit card debt herself. She told researchers that, as a woman and in the context of her relationship, she felt severely disadvantaged in her experience of a financial legal problem and in the way she was treated by her creditors. As such Maryam followed her husband's advice and asked friends and family about bankruptcy. They told her that it would mean all of her debts would be cleared and she wouldn't have to worry about calls from the debt collector anymore. She had stopped answering these calls, saying that she "*was embarrassed, was upset, and I felt stupid.*"

Maryam found help-seeking overwhelming. After her creditors initiated legal proceedings, she used search engines to find "*free legal help for women*". She had never used legal or financial services before and couldn't make heads or tails of the eligibility criteria she read online. After making some applications and being referred around, Maryam said that "*[services] string you along. They keep saying I'll call you back, and then, they don't, or they say sorry we can't help you*".

She knew she needed a lawyer, but Maryam could not afford one. She decided she would go to her court hearing and ask the Judge if she could become bankrupt. She did not believe that her house would be implicated, nor did she understand the proper processes to voluntarily declare bankruptcy. When she arrived at court, she was referred by court services to a duty lawyer. She wasn't sure who the service provider was, but she was certain that it was their intervention that empowered her with the confidence to try and resolve her problem. She said, "*they made me aware of a lot of my rights and made me aware of the dangers I was going to face if I didn't fix my problem.*" Maryam received a discrete service and still had to self-represent. She had been advised not to say she wanted to be made bankrupt and was given some suggestions about how she could describe her situation to the court. She didn't win her case, and there was a costs order awarded against her, causing the total debt she owed to the creditor to rise to about \$35,000.

However, the duty lawyer helped Maryam contact a financial counsellor based near her. The financial counsellor helped her negotiate a settlement agreement with the creditor, reducing the total debt owed. Maryam is now paying off her debts according to a payment plan. She's recently gotten a job helping people in her community, and uses some of the money she earns to meet her settlement agreement obligations. Despite this relatively good outcome, Maryam had circumstances that her credit card issuers, as regulated providers, would have been obliged to take into account had she been able to advocate for herself in time. She was an appropriate candidate for early intervention, but service providers missed their opportunity to help her by denying her early applications.

Finally, Maryam said the following about her experience, speaking to the importance of knowing your rights and the importance of receiving help from others to resolve your legal problems:

*"I wish I lived my life responsible for the outcome of my family financial situation. I wish I had gotten help before I got married. But you know what? All my kids know what to do now, they all have insurance, they know not to get credit cards. You live, you learn, and you help your family. And I have a job now. This helped me build up the courage to go and get a job for the first time in my life. I was 50 years old when I stepped out of my home for the first time and if this all hadn't happened, neither would that".*

# The Surprise Respondent

## Help-Seeker Journey Map

The Surprise Respondent is a debtor who realises they have a legal problem after they have accumulated an unmanageable arrears balance. This might be because they did not know they were liable for a debt or because of poor legal and/or financial capability. This debtor exhibits a short window of help-seeking motivation and are quickly overwhelmed if they cannot find appropriate assistance. Their legal problem escalates quickly. Surprise debtors sometimes access help via court referral processes but are at risk of passing under the radar of services leading to poor outcomes.



Journey phases	Awareness	Consideration	Engage	Service	Outcome	Champion
Description of journey phase	The help-seeker becomes aware of a legal issue	The help-seeker considers their options of who can help	The help-seeker engages with an organisation to help	The help-seeker receives service, to help with their legal issue	The help-seeker resolves their issue	The help-seeker supports others to resolve similar issues

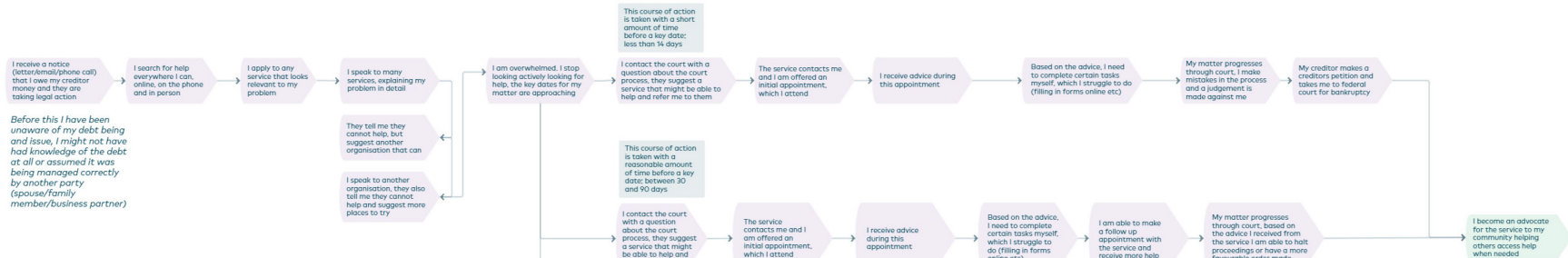
**Actions**  
What is the help-seeker doing throughout this phase



**Navigation**



How someone travels along pathways to and through services



**Positive emotions**

**Emotional journey**

A high-level capture of how the help-seeker feels throughout the journey, identifying painpoints and delight points

**Negative emotions**



## 6. Archetype Two: The Repeat Player



The Repeat Player is a debtor who at the onset of their legal problem is characterised by having relatively high legal capability, demonstrating attributes including legal knowledge, legal skills, digital literacy, and motivation. For participants, this capability was developed:

- **Through working in professional managerial environments, where legal and digital skills are learnt.**
- **Through previously accessing the courts, both as a plaintiff and defendant, for commercial reasons as a business owner.**

Given their experience, when they first have difficulty paying their debts the Repeat Player is relatively confident that they'll be able to navigate the legal system and reach a satisfactory resolution. They proactively reach out to the creditor to explain their problem and believe that the creditor will work with them

to find a solution amenable to both parties. They are surprised to find out that the creditor is unwilling to negotiate or that they are unable to meet the creditor's minimum repayment schedule.

Motivated to find help given their existing knowledge as to the consequences of non-payment and inaction, the Repeat Player then turns to their personal networks to look for help, including friends, family, and professional relationships. They might, for instance, seek to access legal, financial, or other services that they've worked with previously, in a commercial context. Most of the time, these contacts recommend that they engage the services of a fee-paying lawyer.

The Repeat Player researches options, arranges some initial appointments, but finds the costs of these services prohibitive. Whilst having a professional and/or commercial background, the Repeat Player does not have access to sufficient discretionary funds to pay for a service, and any wealth they have generated over the course of their career is generally tied up in the family home.

Now, the Repeat Player turns to free services. They are able to comprehend eligibility criteria that is published online and apply it to their own situation, making applications to the services they think are most appropriate. While making correct determinations as to the areas of law and issues in their legal problem, Repeat Players are generally ineligible for free services. Given funding and capacity constraints, service providers prioritise the most vulnerable members of their communities, often turning away help-seekers who own an asset, and assuming that commercial and/or professional help-seekers are more sophisticated and capable of resolving their legal problems without assistance.

Around this time, the Repeat Player is served court documents: their creditor is commencing legal action. This causes the Repeat Player to experience extremely high levels of stress. Without access to the supports used to navigate the legal system in the past, the experience of stress has substantial implications for the Repeat Player's legal capabilities. They find it difficult to make rational assessments of their options before going to court, understand court procedure, file documents, and self-represent. Typically, the Repeat Player is unsuccessful in defending the claim made against them, resulting in a judgement debt which includes the other party's legal costs.

At this point, the Repeat Player reaches out once more to the services they tried earlier. Now, given the seriousness of their legal problem, they are eligible for some discrete advice about their options. Their creditors may have already issued a bankruptcy notice or sought an enforcement warrant, or these are likely on the horizon. While the discrete advice assists them to understand next steps, they are usually told that their options are limited given the advanced stage of their legal problem.

The Repeat Player Help-Seeker Journey Map provides further detail about this archetype's help-seeking behaviour and legal problem experience.

# The Repeat Player

## Help-Seeker Journey Map

The Repeat Player is a debtor with more legal capability than most. They might have business experience, been before the courts before, or work in professional industries. They prioritise their personal networks, including their creditor, friends, family, or professional associates. They try to navigate the system by themselves but the stress of their financial issue impacts their ability to resolve their legal problem alone. When contacting services, they are often ineligible despite their inability to afford paid services.



Journey phases	Awareness	Consideration	Engage	Service	Outcome
Description of journey phase	The help-seeker becomes aware of a legal issue		The help-seeker considers their options of who can help		The help-seeker resolves their issue

### Actions

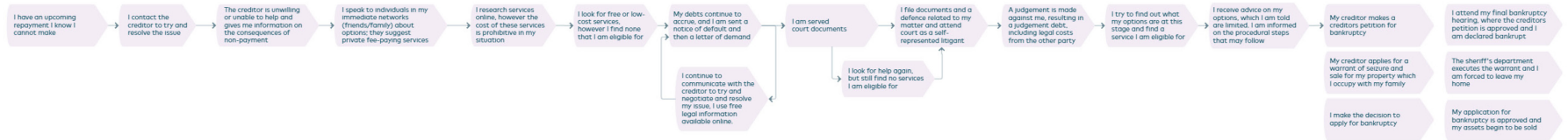
What is the help-seeker doing throughout this phase

- I become aware of my problem
- I research options
- I discover options for support
- Someone refers me for help (and asks me to apply myself)
- Someone refers me for help (and applies on my behalf)
- I apply for a service (or more services)
- I provide information
- I wait for assistance
- I receive confirmation I am eligible for help
- I deal with the service to progress my problem
- I follow up with more assistance / for more advice
- My issue is completely resolved
- I reflect and recommend the service to my social networks
- I return to the service for other problems

### Navigation



How someone travels along pathways to and through services



### Positive emotions

### Emotional journey

A high-level capture of how the help-seeker feels throughout the journey, identifying painpoints and delight points

### Negative emotions



**James** is one participant from whom the Repeat Player archetype was developed.

He was issued a bankruptcy notice in the context of debts associated with what he called an *"ugly business dispute"* with the son of a business partner. James had considerable experience running his business and had dealt with legal issues previously, both in and out of court, with representation from commercial law firms.

The bankruptcy notice was issued at the height of the COVID-19 pandemic, and James had recently suffered the bereavement of his partner.

His business struggled immensely during the pandemic, meaning that he had no income with which to continue to pay for representation.

James was considering selling his family home to service the debt in the bankruptcy notice. But he also felt confident that he could fight the matter. He felt like his upbringing had instilled an attitude of never taking a step back and he wanted a fair outcome.

James appealed the substantive decision in the lower courts successfully as a self-represented litigant. He described *"getting out the law books"* and hired a paralegal to support him with the filling in of forms. He found this paralegal via his professional networks. He said the paralegal was vital because he also experienced a condition that affected his ability to write.

However, he described *"a flaw in the system"* where his appeal of the substantive matter did not stop the bankruptcy process. He was referred to a service provider for advice on his matter by the self-represented litigant coordinator at the Federal Court Registry. When describing what it was like to look for help at that time James said:

*"You get into a fog. You know your life's pretty well turned upside down and you can't think straight and you're looking, you're desperately looking around for help."*

The referral to a legal service and subsequent advice allowed him to extend the timeframes of his matter in the Federal Court and when the orders from the lower court were set aside, he was able to have the Federal Court matter dismissed.

During this process, despite his substantial legal capability James said the hardest part of the process was *"getting relevant information or simple information"*.

James expanded on this by saying *"you know a lot of the information there is ... I'm going to say it's superficial and pretentious. It doesn't deliver you a result. Okay, there's a lot of explanation in there, but it doesn't refer back to actual applications"*.

Ultimately, unlike other Repeat Players researchers spoke to, James had a successful outcome, he avoided bankruptcy proceedings and selling his family home. His business was liquidated, and he was in a difficult financial position, but this was a considerably better outcome than there was potential for. Key to this outcome was James' skills as someone familiar with the legal system, he was aware of his problem and was able to act in relation to discrete advice.

## 7. Archetype Three: The Dogged Debtor



The Dogged Debtor is highly motivated in their search for help but lack legal capability attributes that might support their navigation of the free legal and financial help systems, such as legal knowledge, legal skills, and digital literacy. They realise that they have a financial legal problem relatively early, when they first have difficulty paying their debts, and start looking for help right away.

The Dogged Debtor uses generic search terms to navigate the internet and look for free services. They also speak to their creditor, family, and friends. By casting a wide net, they identify a range of services to apply to. The Dogged Debtor struggles to articulate their legal problem in their application and are unsure about how to apply a service's published eligibility criteria to their own circumstances. They might, for instance, select the wrong area of law on their application, fail to attach crucial documents, or not include certain parts of their legal problem that explain its merits. They might also apply for a service that is not appropriate for their legal problem.

As a result, the Dogged Debtor is generally deemed to be ineligible for the free legal services they apply for. Moreover, given they're dealing with an early-stage dispute, their legal problem might not be a priority for services that are very busy. Most of the time, the Dogged Debtor is not contacted by the service to provide more information about their legal problem, and is off-ramped via email. The email might explain the reasons why the Dogged Debtor is ineligible, but it doesn't always. The email does provide the Dogged Debtor suggestions about what other services to apply for.

Some of these services the Dogged Debtor has already applied for, and some they didn't manage to find on their first search. Characterised by their motivation and persistence, the Dogged Debtor acts on the advice of these emails and keeps making applications. While this is going on, the Dogged Debtor has now defaulted on their loan obligations and are sent a formal notice of default – their legal problem is escalating. Notably, it might take the Dogged Debtor several days to several weeks to hear back from each service they are ineligible for, absorbing time that might otherwise have been spent working constructively with the creditor to reach a resolution.

Throughout their search, the Dogged Debtor might also try paid service providers, particularly those that offer an initial free consultation. These service providers tell the Dogged Debtor they can help them but request a fee that the Dogged Debtor can't afford. They might also have come across financial counselling services, such as the National Debt Helpline or community financial counsellors in their local area. They are on a waiting list.

The Dogged Debtor will typically read legal information available online, either provided for free by legal and financial services, or accessed under a subscription. The Dogged Debtor finds these resources helpful in terms of their understanding the nature of their legal problem and what might happen if they are unable to resolve their dispute. This adds to their motivation to find assistance, as they are not sure what the online legal information means they need to do next.

Importantly, the Dogged Debtor doesn't give up. They keep trying to look for help and eventually they find a service that can help them. This service might be one they have tried before, it might be a service they've recently discovered, or they might have reached the front of a waiting list they've been on for some time. Unfortunately, a lot of time has passed since their legal problem first arose and it is typically significantly advanced. While a service provides them some discrete assistance, their options are now limited. As such, their enforcement consequences are minimised but not avoided.

The Dogged Debtor Help-Seeker Journey Map provides further detail about this archetype's help-seeking behaviour and legal problem experience.

# The Dogged Debtor

## Help-Seeker Journey Map



The Dogged Debtor is highly motivated but lacks essential skills which support navigating the legal system and finding help. Their legal problem escalates while they search for help. This debtor is ineligible for most services they apply to and are referred on. They are likely to experience the "revolving door" of referrals between services. This debtor generally receives discrete assistance at some stage in their journey.

Journey phases	Awareness	Consideration	Engage	Service	Outcome
Description of journey phase	The help-seeker becomes aware of a legal issue	The help-seeker considers their options of who can help	The help-seeker engages with an organisation to help	The help-seeker receives service, to help with their legal issue	The help-seeker resolves their issue

### Actions

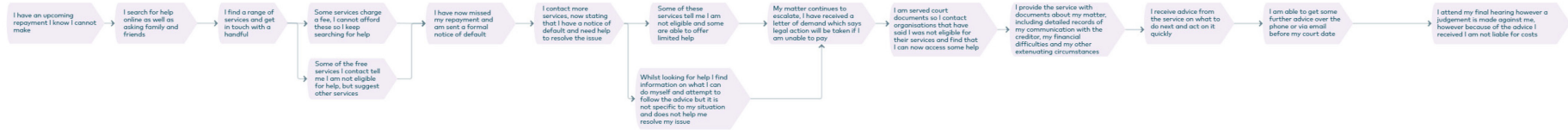
What is the help-seeker doing throughout this phase



### Navigation



How someone travels along pathways to and through services

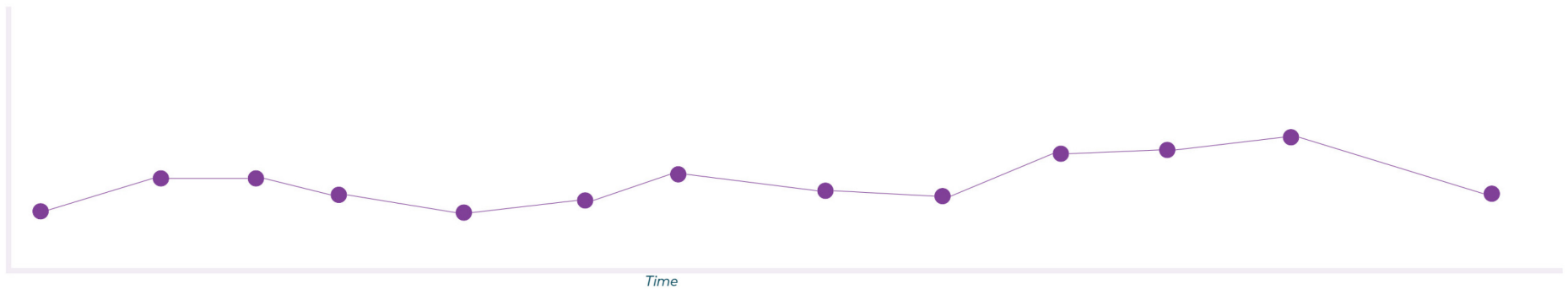


### Positive emotions

### Emotional journey

A high-level capture of how the help-seeker feels throughout the journey, identifying painpoints and delight points

### Negative emotions



**Alexia** is one participant from whom the Dogged Debtor archetype was developed.

Alexia was a single woman in her 40s at the time of her legal problem. She was a franchisee of a retail chain which she had been running successfully for many years.

Her business experienced some difficulties, and she accumulated some business debts to contractors and rental providers. She began searching for financial legal help to try and resolve her business debts. As a business owner, she wasn't able to find a service that would help her, despite making several applications. Services assumed that because she had experience with her business, she would be able to self-advocate and had decent legal capability. Feeling desperate, she expanded her search and started to talk to family and friends about her problem. At this point, she was recommended the services of a mortgage broker, who told her that they would organise some bridging finance whilst arranging a business loan from a bank. The bridging finance would help her pay her debts, and the business loan would then pay off the bridging finance.

She entered into this agreement without a full understanding of the terms, which turned out to provide for a higher interest rate than she expected. She also found out later that the bridging finance was issued by a private, unregulated lender and not a retail bank as she originally assumed. The mortgage broker never helped her obtain a business loan from a bank.

The bridging loan term ended, and she became liable for the full amount. After not being able to pay, her debt was sold to another company who began to pursue her. Alexia was experiencing a range of financial legal problems at this point, and was in mortgage stress.

At this point, Alexia re-engaged with her search for help, reaching out for help relentlessly. She was told she was ineligible for Legal Aid and most of the services she applied for. She eventually got some advice from a drop-in clinic run by a Community Legal Centre. She also sought help from the self-represented litigant case manager at the County Court, and through this was warm referred to another legal service for some more discrete advice.

Due to her persistence in help-seeking she was able to access a number of discrete advice services and some pro bono representation. However, the representation ended after her court date and none of the advice explained what would happen afterwards in a way she could understand. Orders were made by the court, both against her and against the mortgage broker who helped her secure the loan. This meant that she was still liable to pay the debt owed to the private, unregulated creditor. It also meant, however, that she was owed compensation from the mortgage broker which would cover a substantial amount of the total debt.

Alexia's discrete advice wasn't enough relative to her legal capabilities. She didn't know what to do after receiving these orders and wasn't able to access the discrete services again for more help. As such, the creditor was able to enforce the orders against her and obtain a warrant for seizure and sale, before she was able to enforce her orders vis-à-vis the mortgage broker.

As a result, Alexia was made homeless. She has been staying with family and friends since. She is now accessing legal help to enforce the orders in her favour, but is too late to avoid the negative consequences of creditor enforcement. There were many opportunities in Alexia's journey, dating back to her first experience of financial stress with her business, for early intervention to have been provided.

## 8. Archetype Four: The Accidental Client



The Accidental Client is generally referred for help with their financial legal problem after accessing a service for a different life event. As a result, and in terms of access, the free help ecosystem functions relatively well for these debtors.

The Accidental Client experiences a need for professional help as a result of something else going on in their life. For participants this need typically arose out of an experience of:

- **Family violence and/or coercive control;**
- **Serious or sudden illness;**
- **Housing insecurity; or**
- **Mental ill-health.**

The Accidental Client knows that they need help, or is supported by people in their personal networks who identify a need for help.

The life event has begun to impact the Accidental Client's financial circumstances and is making meeting their debt obligations hard. However, the Accidental Client either doesn't recognise this to be a legal problem or is prioritising getting help for something else.

The Accidental Client knows about non-legal services in their community: they've heard their ads on the radio, have seen posters at the library and at bus stops, and they've been asked to donate before outside the local shops. With a bit of research, the Accidental Client gets in touch with a non-legal service. This service proactively recognises the financial aspect of the Accidental Client's problem and brings it to their attention.

Service providers in Victoria invest significant resources into their referral relationships. This is particularly true of generalist Community Legal Centres who over time develop a strong presence in their community. As a result, the non-legal service provider is able to make an effective referral to a free legal service.

Given the vulnerability experienced by the Accidental Client as a result of their life event, they are generally eligible for legal help. Whether or not the Accidental Client receives help in time depends on how long the financial aspect of their life event has been underway and how quickly the non-legal service was able to identify it. Generally speaking, if the referral happens prior to court proceedings commencing, the Accidental Client is able to mitigate some, if not all, of the consequences of debt enforcement.

The Accidental Client Help-Seeker Journey Map provides further detail about this archetype's help-seeking behaviour and legal problem experience.

# The Accidental Client Help-Seeker Journey Map

The Accidental Client is generally referred for help with their financial legal problem after accessing a service for a different life event. The non-legal service is proactive in recognising the debtor's financial legal problem and makes an appropriate referral given the strength of their organisations relationships. The Accidental Client is generally eligible for help and receives it in time.



Journey phases	Awareness	Consideration	Engage	Service	Outcome
Description of journey phase	The help-seeker becomes aware of a legal issue	The help-seeker considers their options of who can help	The help-seeker engages with an organisation to help	The help-seeker receives service, to help with their legal issue	The help-seeker resolves their issue

## Actions

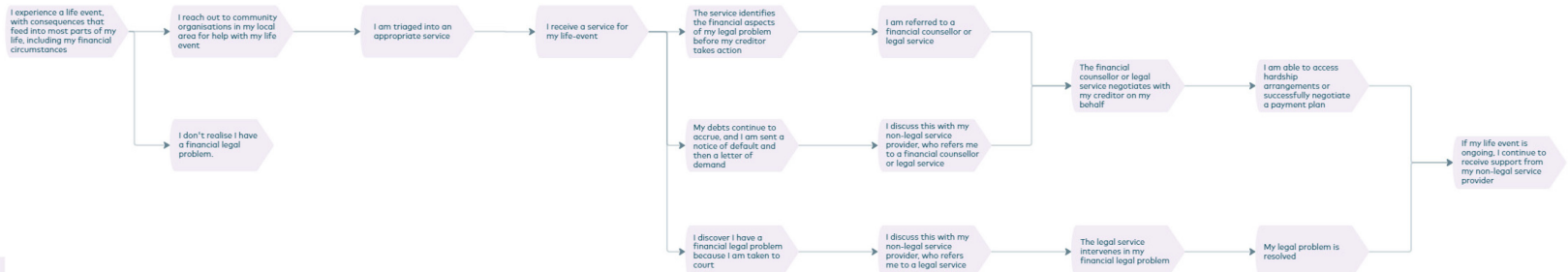
What is the help-seeker doing throughout this phase

- I become aware of my problem
- I research options
- I discover options for support
- Someone refer me for help (and tells me to apply myself)
- Someone refer me for help (and applies on my behalf)
- I apply for a service for many services
- I provide information
- I wait for assistance
- I need confirmation of an eligible for help
- I work with the service to progress my problem
- I follow up with more questions for more advice
- My issue is completely resolved
- I refer and recommend the service to my social networks
- I return to the service for other problems

## Navigation



How someone travels along pathways to and through services

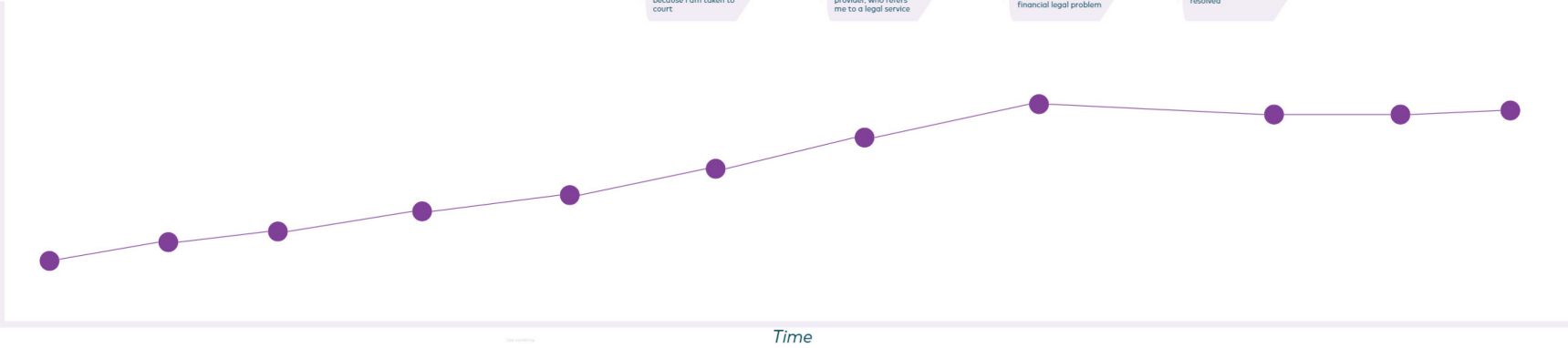


Positive emotions

## Emotional journey

A high-level capture of how the help-seeker feels throughout the journey, identifying painpoints and delight points

Negative emotions



**Bilan** is one participant from whom the Accidental Client archetype was developed.

For Bilan, the referral process worked seamlessly, given a sequence of effective referrals.

Bilan is a recent migrant to Australia and belongs to a tight knit community of new Australians in Melbourne's outer suburbs. She recently bought her first house, and lived there with her family. Bilan felt that the next step in setting up her new life was starting a business. She told us she wanted to "*stand on her own two feet*". She is skilled in a variety of professions, but her real passion is helping people as a nurse. After obtaining her registration, she reached out to her community, looking for people with business experience to help her get started.

She was put in contact with a group of people, who were operating as 'business consultants' and had worked with numerous people in her community before. The consultants provided her with finance to get her business off the ground, over \$80,000. She wasn't told this, but written into the financing agreement was a requirement that the principal and interest was to be paid back within a year. Her friends in her community that had previously engaged with the consultants didn't know either.

At the time, Bilan was unfamiliar with Australian law, particularly as it relates to business ownership and obtaining credit for a business. She didn't know that private loans were risky, and she didn't know she had rights when dealing with her creditor. She didn't know that there were free legal services in her area, nor did she know about financial counselling services.

After a year passed, the creditors swiftly initiated action to enforce the debt. Bilan didn't realise that the letters arriving to her house meant that she needed to go to court or that there was a legal element to her problem. She only knew that she had to find a way to pay the debt. She considered selling her new home and engaged a real estate agent to facilitate the sale. While her home was on the market, a default judgement was awarded in the creditors favour. Before she sold her home herself, the creditors then obtained a warrant of seizure and sale to enforce the default judgement.

When the sheriff arrived at her house to take possession, Bilan remained unaware that there was help available to her for the legal aspect of her problem. But, she knew she needed to secure housing for her family.

She had heard about the Salvation Army because of events they ran in her local area and thought they might be able to help her find some temporary accommodation. Standing outside her house while the locks were changed, Bilan gave them a call. The Salvation Army referred her to an organisation called Unison Housing. Unison Housing, realising Bilan was in distress, referred her to cohealth for some emergency mental health support. Listening to her story, the workers at cohealth realised she had a legal problem and made a referral to a community legal service with whom they had a referral relationship. Within three days Bilan was connected with a lawyer.

The legal help Bilan received wasn't early intervention. However, the strength of the referral relationships the organisations she contacted held led her to the support she needed.

# Part Five: Recommendations

This Part of the report contains recommendations for improving early intervention support for financial legal problems and strengthening existing financial legal services. These recommendations are based on the research’s findings and behavioural archetypes, explored in the context of existing service availability. They are aimed at creating a legal system which contributes to improved outcomes for Victorian debtors by leveraging their existing capabilities.

## 1. Summary of recommendations

Service-level recommendations	1	Service providers must routinely, systematically, and transparently share eligibility guidelines and wait times for their services with other Victorian providers. <i>For example, by revitalising existing service databases or introducing new communities of practice.</i>
	2	Service providers must recenter ‘legal system navigators’, by ensuring that ineligible enquirers are provided tailored legal information and an appropriate referral. <i>For example, the intensity of support provided to an ineligible enquiry should be determined by reference to the enquirer’s legal capabilities.</i>
	3	Service providers must clearly communicate on their website, in plain language, who is eligible for their services and who is not. <i>Importantly, eligibility guidelines must be capable of being understood by help-seekers with poor legal capabilities.</i>
	4	Service providers must communicate the outcome of referrals to the referring organisation (where identified) and if the referral is unsuccessful, should provide reasons for that assessment. <i>For some services, this will require implementing strategies to identify the help-seeking history of enquiring debtors.</i>
	5	Service providers must maintain a digital presence in spaces utilised by debtors in their search for help. <i>For example, service providers can invest in search-term driven search engine marketing to ensure that their services are easily accessible to debtors using search engines to find help for their legal problem.</i>
	6	Service providers should invest in and develop strategies to respond to latent demand for financial legal services in Victoria, aimed at increasing public awareness around financial legal problems and services that help. <i>For example, service providers can invest in proactive digital marketing strategies and campaigns.</i>
	7	Service providers should consistently assess and re-assess the legal capabilities of their clients as they pass through their services, and tailor service intensity in a flexible and ongoing way. <i>For example, it might become necessary to increase the intensity of services provided to a person as their legal problem escalates given the relationship between escalation and legal capability.</i>
	8	Service providers must utilise co-design practices when evaluating and designing services, including online information and tools, that encompass the variety of clients that may access them, and includes ‘legal system navigators’ (or ineligible enquirers).
	9	Service providers should take a ‘consequences driven’ approach to defining their eligibility criteria, assessing the vulnerability of enquirers, and making a determination of public interest. <i>For example, this might require considering the impact of impending creditor enforcement on a person’s means rather than relying only on their current financial position.</i>
Systems-level recommendations	10	The free legal assistance sector must identify opportunities for collaboration, aimed at addressing pervasive service gaps intentionally, efficiently, and strategically. <i>For example, we have identified the co-occurrence or intersection of financial legal problems with family law and commercial law to be under-served.</i>
	11	The Victorian and Commonwealth Governments must expand dedicated funding opportunities for free legal services, to address service gaps and resource expanded access to early intervention financial legal help for Victorian debtors.
	12	The Victorian and Commonwealth Governments must expand access to ongoing funding for free legal services. <i>Short-term or non-recurring funding restricts free legal services’ ability to implement workforce development and retention strategies.</i>

## 2. Recommendations: links to debtor behaviour and service alignment

### Reducing the referral roundabout

This research has identified that referral roundabouts continue to affect help-seeking, and discourage and interfere with the timely provision of financial legal help. It concludes that there is debtor demand for early intervention support. The existing legal ecosystem is not sufficiently responsive to this demand, in part, due to the difficulties debtors face being connected with the most appropriate service within a reasonable time. The following recommendations have been identified as strength-based measures through which to reduce the referral roundabout and connect help-seeking debtors with the right service more efficiently.

#### SERVICE-LEVEL RECOMMENDATION 1:

**Service providers must routinely, systematically, and transparently share eligibility guidelines and wait times for their services with other Victorian providers.**

For example, by revitalising existing service databases or introducing new communities of practice.

The Dogged Debtor, Repeat Player, and Surprise Respondent, along with most participants, find it challenging to be connected with legal help, even after being provided referral information by a service they are ineligible for. Most of the time, ineligible enquiries are off-ramped through template or generic emails, or provided a list of alternative services. Debtors, when acting on referral advice provided by a legal service, are frequently unable to access recommended organisations, whether because of that organisations' inappropriateness, capacity, or predicted wait times. Debtors report that it takes multiple cold referrals before they can access assistance, and that they are often recommended services they've already tried to access. The time taken to be connected with help co-occurs with escalating legal problems. Debtors report feelings of demoralisation and overwhelm after multiple unsuccessful applications, causing many to disengage from the help-seeking process before accessing a service. This is a significant barrier to early intervention for financial legal problems in Victoria.

There are many services in Victoria that provide assistance with common financial legal problems, including debt matters. However, service provider participants report that they lack up-to-date information about when and how other services can help. Eligibility guidelines fluctuate often, in response to demand and the changing landscape of legal need. And, in the context of rising legal need and insecure funding, many services are required to responsively limit or change their assistance models from time-to-time.

Enabling close to real-time sharing of eligibility information, through digital tools or in-person communication, will assist services to make effective referrals for ineligible clients, reducing the number of services a client has to reach out to in order to be connected with the right service.

#### SERVICE-LEVEL RECOMMENDATION 2:

**Service providers must recenter 'legal system navigators', by ensuring that ineligible enquirers are provided tailored legal information and an appropriate referral.**

For example, the intensity of support provided to an ineligible enquiry should be determined by reference to the enquirer's legal capabilities.

Despite looking for help at the onset of their legal problem, the Repeat Player and Surprise Respondent end their search if they are not able to connect with an appropriate service relatively quickly. Meanwhile, their legal problems escalate. Researchers recommend that the intake and other frontline teams at

services prioritise their triage function, by assisting legal system navigators on their search for free help. Legal system navigators are commonly referred to by legal service providers as “ineligible enquirers”. This recommendation is targeted at limiting help-seeking disengagement by providing a value add, in the form of supported navigation, in the absence of a service. By responding to and encouraging help-seeking behaviour, even when a service cannot be provided, services bolster already existing debtor motivation.

Supported navigation means:

- Making effective referrals;
- Responding to legal system navigators in a timely manner;
- Recognising the distinct legal capabilities of enquiring clients and adjusting the intensity of navigation support accordingly; and
- Providing relevant and clear legal information, including information on upcoming deadlines and key dates.

Providing supported navigation to legal system navigators might require finding out more information than a debtor provided on their application. It might also require making warm referrals in the event that a client is identified as someone with low legal and/or digital capability.

Supported navigation should be imagined as an essential component to service provision, not an administrative process or function. Implementing this recommendation requires being client-centric in all aspects of service provision. All archetypes experience fluctuations in their legal capability, related to the escalation of their financial legal problem, and require various intensities of support at different stages. Importantly, this research has identified that assumptions about legal capability based on gender, age, and profession (among other things) do not always reflect debtor capabilities. For example, the Repeat Player begins their journey with relatively high legal capability. The stress and isolation driven by the experience of serious financial legal problems reduces that capability, and they experience similar challenges navigating the system on their own as other debtors.

#### SERVICE-LEVEL RECOMMENDATION 3:

**Service providers must clearly communicate on their website, in plain language, who is eligible for their services and who is not.**

Importantly, eligibility guidelines must be capable of being understood by help-seekers with poor legal capabilities.

This research has identified that current strategies to communicate eligibility guidelines to help-seekers are insufficiently clear, particularly in the context of poor legal capability. Most published eligibility criteria are means and area of law driven. Service providers report, however, that there are additional considerations applied on a case-by-case basis, including merit, public interest, priority cohorts, complexity, and jurisdictional questions, that will affect whether or not an enquiry is eligible.

Participants repeatedly identified casting a wide net when making applications for help, but not wanting to. A strength-based response recognises a debtor’s preference to be connected with the right service quickly, and the methods used by debtors to identify what the right service is: online search and eligibility guideline review. The Repeat Player, Surprise Respondent, and (in the early stages of their legal problem) the Dogged Debtor all make an effort to match their legal problem with a service, using online search. However, they find it challenging to interpret the information shared by services online. Where participants were exceptions to this rule, and reported successfully using online eligibility criteria, the resources utilised included examples of the types of legal matters the services could and could not help with.

Where possible, eligibility guidelines should provide information on where a person can get help for their legal problem, in the event that type of legal problem is deemed ineligible.

#### SERVICE-LEVEL RECOMMENDATION 4:

**Service providers must communicate the outcome of referrals to the referring organisation (where identified) and if the referral is unsuccessful, should provide reasons for that assessment.**

For some services, this will require implementing strategies to identify the help-seeking history of enquiring debtors.

This research has identified that services are routinely referring ineligible clients to places that cannot assist them, due to capacity and misidentification of eligibility (among other reasons). This recommendation is designed to provide real-time referral capacity building and skills development amongst the legal sector. Service providers report a substantial gap in their data relating to what happens to help-seekers once they are off-ramped.

Further, this research has identified that most debtors who access a service were referred to that service, even in the event that they do not disclose it. Additionally, most referrals are cold referrals. We can infer, therefore, that many legal system navigators are referred to the services they are ineligible for.

Delivering this recommendation may require that services implement strategies to collect information about the help-seeking history of their enquirers in order to provide the appropriate feedback. This might include adding new fields to application forms, and it might include having conversations with legal system navigators prior to off-ramping them.

## Responding to express demand by improving service visibility

#### SERVICE-LEVEL RECOMMENDATION 5:

**Service providers must maintain a digital presence in spaces utilised by debtors in their search for help.**

For example, service providers can invest in search-term driven search engine marketing to ensure that their services are easily accessible to debtors using search engines to find help for their legal problem.

Ensuring services meet people where they are is essential to early intervention, and a core principle of strength-based service design. This research indicates that help-seekers actively look for help at the onset of their legal problem, utilising a range of methods. Each debtor archetype, and almost all participants, utilise Google or other search engines to find services when they need help. Even where a debtor prefers to contact services over the phone or in-person, they utilise a search engine to identify services and their contact information. Most of the time, debtors use generic keywords when looking for help. The Dogged Debtor, Surprise Respondent, and Accidental Client all have difficulty finding appropriate services through online search, given the extent of available information and the lack of specificity in search results.

Paid digital consumer outreach can be used effectively to help debtors in their search for legal help. By “sponsoring posts”, services ensure they are visible early in a debtor’s search for help. Further, digital consumer outreach allows service providers to compete with for-profit or illegitimate providers in the debt management space, namely debt management companies and predatory lenders.

A debtor utilising the internet to find services has begun a search for help. A strong digital presence in commonly used spaces, which leverages a debtor’s natural language, responds to existing behavioural characteristics of debtors and expands access to services, by promoting accessibility and improving visibility.



## Addressing latent demand by increasing awareness of financial legal problems and avenues to find help

### SERVICE-LEVEL RECOMMENDATION 6:

**Service providers should invest in and develop strategies to respond to latent demand for financial legal services in Victoria, aimed at increasing public awareness around financial legal problems and services that help.**

For example, service providers can invest in proactive digital marketing strategies and campaigns.

This research has identified the importance of commonly held legal knowledge and skills in community, having found that many debtors engage peer-to-peer help-seeking strategies in the early stage of financial legal problems. Participants who achieved early resolution of their legal problem, did so in part due to the strength of their community connections and the knowledge they learned from non-professionals.

Additionally, while most participants began searching for help when they realised they had a legal problem, due to circumstance, for some this realisation comes too late. For example, the Surprise Respondent does not know that they have a legal problem until a creditor commences legal action against them, for a variety of reasons.

Evidence points to a concerning low awareness amongst the Victorian public as to their rights entering debt agreements and facing creditor enforcement. Additionally, as characterised by the Dogged Debtor, participants' knowledge of free legal services, the National Debt Helpline, and financial counsellors is relatively low.<sup>21</sup> This is a potent combination that drives legal problem emergence and makes help-seeking more challenging.

Additionally, it suggests that there is latent financial legal need amongst Victorian debtors. Latent financial legal need refers to legal problems that are not known or expressed by those that hold them, meaning that they do not actualise into help-seeking or service provision. This is a substantial barrier to early intervention and contributes to the prevalence of late-stage service provision.

As an example of ways to increase awareness of financial legal problems and services that can help, digital consumer outreach provides a proven strategy through which to reach at-risk members of the Victorian community, proactively. Legal and referral information can reach cohorts of vulnerable Victorians, using information about debtor demographics, geography, or interests and consumer behaviour to direct campaigns to preferred audiences. Researchers hope that this report, particularly Part One, provides guidance to service providers about who in their community would benefit from targeted information.

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<sup>21</sup> Researchers note that the National Debt Helpline, Consumer Action Law Centre, Financial Counselling Victoria, and Financial Counselling Australia have been heavily featured in the media in 2024. This has undoubtedly increased the profile of these services and improved public understanding of emerging financial legal need.



## Being client-centric: adapting to clients' legal capabilities

### SERVICE-LEVEL RECOMMENDATION 7:

**Service providers should consistently assess and re-assess the legal capabilities of their clients as they pass through their services, and tailor service intensity in a flexible and ongoing way.**

For example, it might become necessary to increase the intensity of services provided to a person as their legal problem escalates, given the relationship between escalation and legal capability.

The debtor archetypes – the Dogged Debtor, the Repeat Player, the Surprise Respondent, and the Accidental Client – indicate themes this research has identified in help-seeking behaviour and debtor characteristics, and demonstrate a wide range of service needs. This research has affirmed that a one-size-fits-all approach to delivering legal services is unlikely to meet the needs of a diverse community.

Multi-intensity services should be explored by service providers. In practice, the legal capability of all debtors should be meaningfully assessed by service providers during intake processes such that the appropriate service channel is identified. For some clients, light-touch assistance navigating online information might be sufficient. For others, additional support to understand their legal problem and resolve it, including performing legal and other tasks on their behalf, might be required.

This research has further identified that a debtor's legal capabilities shift across the duration of their legal problem. The Repeat Player is particularly vulnerable to the misidentification of legal capability. Importantly, necessitating that debtors are proactive in times of stress and as non-experts in their legal problem, can mean key intervention points and resolution options are missed. Accordingly, service providers should be cognisant and responsive to the changing needs of their clients during service provision.

Researchers note that, while resource intensive to operate, integrated services provide a solid foundation from which to effectively tailor the support provided to debtors based on their legal capability.

### Participants on integrated services for financial legal problems:

*"[E]specially in my situation the issue incorporated a range of issues that needed to be resolve[d] to finalise my matter, so different professionals needed to help resolve my matter."*

*"It takes a huge amount of time and effort to manage creditors and get advice on how to proceed – it would be wonderful to have all that in one place. Also... I suggest adding a counselling therapist to this integrated service. I suffered terrible anxiety and depression but had to keep going to support my Ward with a disability."*

*"[It] can make it a more seamless process."*

*"I know from my experience that it took some time to get the full spectrum of advice as I was not referred to anyone else by any of professionals and I had to learn to navigate my way by myself."*

#### SERVICE-LEVEL RECOMMENDATION 8:

**Service providers must utilise co-design practices when evaluating and designing services, including online information and tools, that encompass the variety of clients that may access them, and includes legal system navigators (or ineligible enquirers).**

As illustrated by the debtor archetypes, not all debtors require the same service discipline, intensity, channel, or timing. Co-design provides an effective methodology through which to include the stories, voices, and experiences of the people who utilise and rely on our services.

This research has identified a series of inconsistencies between what service providers, including Justice Connect, thought about debtor behaviour and what debtors actually do. This could not have been identified without centring the insights of people in Victoria with lived experience of financial legal problems in this research. For further discussion on co-design principles, please revisit Part Four, Section 1.

Additionally, this research has identified a need to innovate and adapt the provision of online information to suit the needs of Victorian debtors. Participants have identified that the information available online is often too general, and does not address the complexity of financial legal problems as they are experienced in Victoria. Online information can be difficult to navigate and generally requires comprehension of dense bodies of text. As reported by service providers, considerable strides have been taken in improving plain language communication throughout the sector. However, information on processes (particularly court processes), visual aides to guide debtors to complete forms, applications and other filings, and greater interactivity remain unavailable or inconsistently utilised.

## Reframing need to address pervasive service gaps

#### SERVICE-LEVEL RECOMMENDATION 9:

**Service providers should take a 'consequences driven' approach to defining their eligibility criteria, assessing the vulnerability of enquirers, and making a determination of public interest.**

For example, this might require considering the impact of impending creditor enforcement on a person's means rather than relying only on their current financial position.

This research suggests that early intervention for financial legal problems, done properly, requires service providers to make an assessment of the potential consequences facing a debtor, in the event they do not access legal help when determining eligibility for their services. This is because early intervention seeks to proactively resolve financial legal problems before they have begun to impact a person's overall financial circumstances and general wellbeing. Researchers have identified the following risk factors impacting a person's exposure to risk:

- Their legal capability;
- Their motivation to find help;
- Their likelihood of accessing help elsewhere; and
- The enforcement avenues available to their creditor, in the short-, medium-, and long-term.

Debtors like the Repeat Player have difficulties accessing services until the final stages of their problem, at which time bankruptcy or similar enforcement outcomes are near-inevitable. And, not all financial legal problems arise from circumstances of acute financial hardship. Creditors are motivated to recoup arrears balances to the fullest extent possible, placing individuals who own assets or middle-income earners at risk of enforcement strategies targeted at the sale of those assets, including the family



home, or the garnishing of that income including through bankruptcy. Simultaneously, however, many debtors are ineligible for a range of services due to their asset ownership, salary size, and assumed legal capability. For these debtors, intervention from free services is crisis oriented only. As reported by service providers, these debtors remain vulnerable to the negative consequences of bankruptcy regardless of their legal problems' origin.

Considering what might happen to a debtor, what is at risk in terms of their financial situation and wellbeing, and who else, including dependents, might be impacted by a failure to access services requires a shift away from the current practice of assessing a matter based on the potential client's current circumstances.

#### SYSTEM-LEVEL RECOMMENDATION 10:

### **The free legal assistance sector must identify opportunities for collaboration, aimed at addressing pervasive service gaps intentionally, efficiently, and strategically.**

For example, we have identified that the co-occurrence or intersection of financial legal problems with family law and commercial law to be under-served.

This research has identified pervasive service gaps in the provision of legal help for financial legal problems in Victoria for specific areas of law. These service gaps are typified by their complexity, as a result of their intersection with other legal jurisdictions or practice areas. As reported by both debtor participants and service provider participants, Victorians whose financial legal problems intersect with commercial law and family law (specifically, property settlements) have limited access to affordable expertise. Similarly, despite rising need, Victorians with debts issued by body corporations have challenges being connected with stage-appropriate legal help. The Repeat Player, Dogged Debtor, Surprise Respondent, and Accidental Client are all impacted by these identified service gaps which slow or prevent successful help-seeking.

Among other things, this research has identified the impact of the following on service availability for these issues:

- **Financial legal problems/commercial law:** Community Legal Centres often have eligibility and legal practice guidelines which identify priority cohorts, typified by their experience of particular vulnerabilities. Debtors with financial legal problems arising from business or commercial contexts can appear less vulnerable, because, like the Repeat Player, higher legal capability or greater access to paid services is imputed. Moreover, resolution of commercially-related financial legal problems can be complex and resource intensive. Service providers reported that in making an assessment of their resource allocation, business and/or commercially associated debtors are de-prioritised for assistance. However, these debtors *"continue to be impacted by bankruptcy, regardless of its commercial origins"*.
- **Financial legal problems/property settlements (family law):** Where financial legal problems are implicated by, caused by, or intersect with family law settlements, service providers report having trouble providing assistance, particularly in the context of early intervention. Specifically, given different jurisdictions, resolving a legal problem that straddles family and civil law can require significant resources and particular expertise.
- **Financial legal problems related to strata and body corporate debts:** Strata debts include unpaid fees owed on a regular basis and special levies raised in addition to fees to cover extraordinary expenses, that owners of properties under strata title must pay. As they are issued by unregulated credit providers, strata debts are subject to aggressive creditor enforcement action, with one service provider describing proceedings as a *"freight train that once it gets going cannot be stopped"*. Service providers report rising legal need regarding strata debt and emphasise the importance of early intervention given the speed of legal problem escalation. However, many service providers note that they cannot assist with strata-related financial legal problems for eligibility reasons, primarily, given the debtors' ownership of the asset implicated in the legal problem.

Generally speaking, providing assistance with financial legal problems requires particular skills and expertise of legal and financial services. Specialisation, however, can impact the ability of these services to address co-occurring or intersecting legal problems. Services that *can* assist are often impacted by capacity restraints and must "*prioritise the most vulnerable*", and therefore assist rarely and with a focus on crisis-point intervention.

In practice, to address these legal problems, a debtor is occasionally assisted by multiple legal services at the same time. However, infrastructure and legal practice limitations placed on the sharing of information and resources impact the collaboration between legal services, and formalising capacity building strategies can be challenging in insecure funding contexts.

Secondary consults were identified by service provider participants as a useful tool that supports the provision of assistance that straddles multiple practice areas. Service providers also identified, however, that institutionalising capacity building collaboration between services is difficult and tends to operate in a time-confined and project-based manner.

## Increased resourcing for early intervention

The service-level recommendations contained in this report use the terminology "must" and "should" in different contexts. These terms are not considered interchangeable and have been employed intentionally. Researchers acknowledge that many of this research's recommendations carry with them significant costs associated with resourcing. Most service provider participants do not have capacity to develop new strategies to prevent the escalation of financial legal problems or expand their services to respond to debtor demand for behaviour associated with early intervention, whilst simultaneously maintaining their existing practices. Accordingly, where researchers anticipate that recommendations will have substantial implications for service resourcing, we have used the terminology "should".

Researchers call upon the Victorian and Commonwealth Governments to appropriately and sustainably fund financial legal services in order to permit implementation of this report's recommendations. This report identifies that debtor demand for early intervention is already present in Victoria. Services must be resourced to respond to this demand appropriately.

### SYSTEM-LEVEL RECOMMENDATION 11:

**The Victorian and Commonwealth Governments must expand dedicated funding opportunities for free legal services, to address service gaps and resource expanded access to early intervention financial legal help for Victorian debtors.**

The March 2024 Independent Review of the National Legal Assistance Partnership Final Report identified that "prevention and early intervention activities are very valuable, but under current arrangements [are] not well funded or properly valued from a reporting perspective"<sup>22</sup>.

Victorian and Commonwealth Governments must expand access to dedicated funding for early intervention financial legal help, to enable services to implement the recommendations and respond to the findings of this report. This funding must be concurrent with existing funding for core services or crisis-driven responses for debtors with acute legal need or vulnerability. An appropriate outcome measurement framework must be developed for early intervention financial legal help, to enable services to demonstrate their impact.

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<sup>22</sup> Dr W Mundy, "Independent Review of the National Legal Assistance Partnership Final Report", (2024) accessed at: [www.ag.gov.au](http://www.ag.gov.au)



SYSTEM-LEVEL RECOMMENDATION 12:

**The Victorian and Commonwealth Governments must expand access to ongoing funding for free legal services.**

Short term or non-recurring funding arrangements restricts free legal services' ability to implement workforce development and retention strategies.

Service providers identified that staff turnover and expertise loss caused by short-term contracts, remuneration stagnation, and limited career progression opportunities, impact their ability to develop the expertise and engagement strategies through which early intervention support for financial legal problems is provided. They further report that these problems arise from a context of insufficient resourcing and short-term funding arrangements. The coordination and continuity of innovative strategies to address debtor demand for early intervention support for financial legal problems relies on services' ability to attract and retain a skilled workforce.

Funders must provide sustainable, ongoing funding to financial legal services to support the delivery of core services alongside the sustainable implementation of new strategies to address the changing face of debt enforcement, increasing demand for financial legal help, and respond to debtor demand for early intervention services.

## Part Six: Conclusion

**This research was completed over an 18-month period, during which researchers spent time listening to and understanding the experiences of people in Victoria with lived experience of financial legal problems, as well as the experiences and reflections of people working for service providers who help people with financial legal problems. This process revealed much about the way debtors behave, and the way that legal services are insufficiently adapted to debtor behaviour. This conclusion summarises key findings of the research and themes emerging from the report's recommendations.**

This research has identified that there is debtor demand for early intervention for financial legal problems. Research has found that while almost all Victorians try to get help for their financial legal problem, either at its onset or when they first become aware of it, despite their best efforts, they cannot access help in these early stages. Finding services, understanding service eligibility, and applying for services is complicated. On top of that, many debtors find themselves ineligible for help early, whether it be due to service gaps in the Victorian legal help ecosystem or because services prioritise crisis-point intervention, and so do not assist debtors before their problems escalate. This stands as a barrier for many debtors finding help.

Debtor behaviour archetypes, the Dogged Debtor, the Repeat Player, the Surprise Respondent, and the Accidental Client, reveal the diversity in debtor legal problem experience, legal capability, and behaviour. Archetypal debtors differ in the alignment between their behaviour and capabilities and service availability, but they are united in a commonly shared goal: to access help for their problem from someone with expertise as soon as possible.

Debtor behaviour archetypes show that service providers must be reflexive to the range of people that access their services. The research has identified that services over-estimate the legal capability of debtors, particularly during times of acute stress, and that debtors are expected to adapt their behaviour to services designed by lawyers and without debtor input. Therefore, this research concludes that services must help the range of debtors that access their services, in light of their unique needs, and their particular capabilities. In response, researchers recommend that:

- Service providers provide explicit instructions to debtors as part of their eligibility guidelines, which outline in plain language and through examples who can access their services and who cannot.
- Legal system navigators (also known as ineligible enquirers) must be re-centred in service evaluation and design, and service providers must provide support to all applicants to their services to assist with legal system navigation.
- The legal sector must be more adaptive to changing debtor behaviour, both over the life of a legal problem and, at the community level, over time.

While this research acknowledges resourcing and capacity limitations pervasive in the free legal sector, it finds that there are actions that are within services' present capabilities, requiring only a re-organisation of priorities to implement. The legal sector must become more client-centric in its provision of free legal help, and through doing so, it will develop the skills, knowledge, and tools through which to respond to debtor demand for early intervention support for financial legal problems.

**The legal sector must become more client-centric in its provision of free legal help, and through doing so, it will develop the skills, knowledge, and tools through which to respond to debtor demand for early intervention support for financial legal problems.**

