

# Mental Illness and Debt



Information for Financial Counsellors



## DISCLAIMER

The material in this booklet is for information only and is not legal advice.

This booklet has been developed from research into bankruptcy and mental illness. The research was undertaken as part of a research project funded by Consumer Affairs Victoria entitled '*Bankruptcy for People with a Mental Illness – What Happens When Credit Code Remedies Fail?*'.

### The project aimed to

**Explore** the association between mental health, financial crisis, the use of hardship provisions and bankruptcy in a review of the literature.

**Describe** how financial counsellors and community service workers might intervene on behalf of individuals living with mental illness who are in financial difficulty.

**Provide** information to assist community services and primary health services assist people living with mental illness who are in financial difficulty

The full report on the project '**Smiling for the First Time: Bankruptcy for people with a mental illness. What happens when credit code remedies fail?**'

by Martin Ryan, Beverley Kliger and Bill Healy

is available on the Good Shepherd Youth & Family Service website at [www.goodshepvic.org.au](http://www.goodshepvic.org.au)

## ACKNOWLEDGEMENT

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Further information

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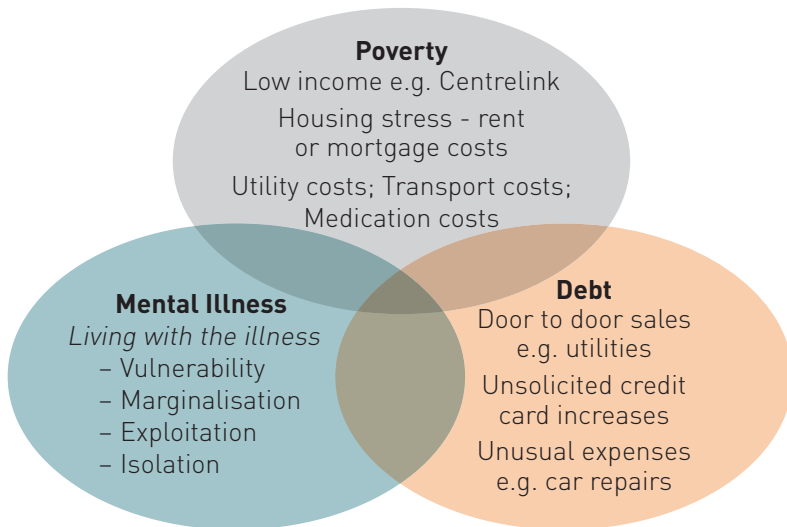
[www.goodshepvic.org.au](http://www.goodshepvic.org.au)



## Living with a Mental Illness

People with a mental illness are amongst the most vulnerable and marginalised due to their mental illness. Often they live in poverty on a limited Centrelink income yet are faced with additional expenses for medication. They can experience social exclusion from education, employment and housing. They may also experience financial exclusion being unable to access formal financial services. They may have the burden of low self-esteem and often have impaired judgement due to their mental health illness. They may experience feelings of hopelessness associated with being mentally ill, anxiety about social interactions and have difficulty coping with complex organisational systems and in coping with medication. Carers can also get caught in this spiral of despair, anxiety and depression.

### The interrelationship between poverty, mental illness and debt



Debt and mental illness are interrelated as people surviving on a Centrelink income can be trapped in a culture of poverty and a state of chronic debt. They face a constant struggle to pay everyday expenses of housing, utilities, food, and transport. Often they have no option but to get into debt.

Due to their vulnerability and isolation people with a mental illness can be at risk and susceptible to: offers to increase credit card limits; door-to-door sales, especially from utility providers; and, offers (phone or mail) that include 'freebies' such as free food at a seminar selling holiday time shares on credit.



Many people, including people with a mental illness, do not understand that payment of a credit card minimum monthly payment will result in the debt growing because the interest will continue to be charged on the outstanding balance.

Many people who have mental illness do not understand or recognise that they may need treatment for their illness.

### The Relationship between Debt and Mental Illness

Debt may be both a cause and consequence of mental illness.

There are a number of health consequences associated with debt including anxiety and stress, depression, self-harm and suicidal thoughts. As well, there are social consequences such as isolation and social exclusion, shame, social embarrassment and a sense of personal failure.

Being in debt can itself be a major source of a mental illness.



Having a mental illness can affect a person's understanding and judgement of contracts, finance and of the degree of credit risk leading them to agree to inappropriate credit arrangements and/or being exploited by a credit provider.

There are a number of pathways from mental illness to debt, such as:

- a. *Prior to diagnosis* – debt incurred before a formal diagnosis can be exacerbated with intensification of an illness and subsequent hospitalisation or loss of work.
- b. *Anxiety and stress* – an inability to pay debt and/or constant demands for payment from creditors or debt collectors can cause the person to borrow to pay off existing debts increasing their indebtedness.
- c. *Depression* – either buying items on credit to elevate a 'black' mood or an inability to keep commitments such as making payments because of the depressive state.
- d. *Manic phase of bipolar disorder* – buying items on credit when in an elevated mood or being unable to keep commitments such as making payments when in a depressive state.
- e. *Psychosis* – incurring credit during a delusional or hallucinatory phase.
- f. *Co-morbidity* – borrowing to support a substance abuse problem (e.g. drug, alcohol or gambling).
- g. *Borderline personality disorder* – acting with poor judgement and/or impulsively incurring significant debt.



Increased spending and debt can be a sign of a relapse of a person's mental illness. When someone relapses they frequently can't and don't pay bills and debts. Alternatively, a financial problem can trigger a mental health episode as well as disabling depression.

### The experiences of people with a mental illness

Some statements from people living with mental illness include:

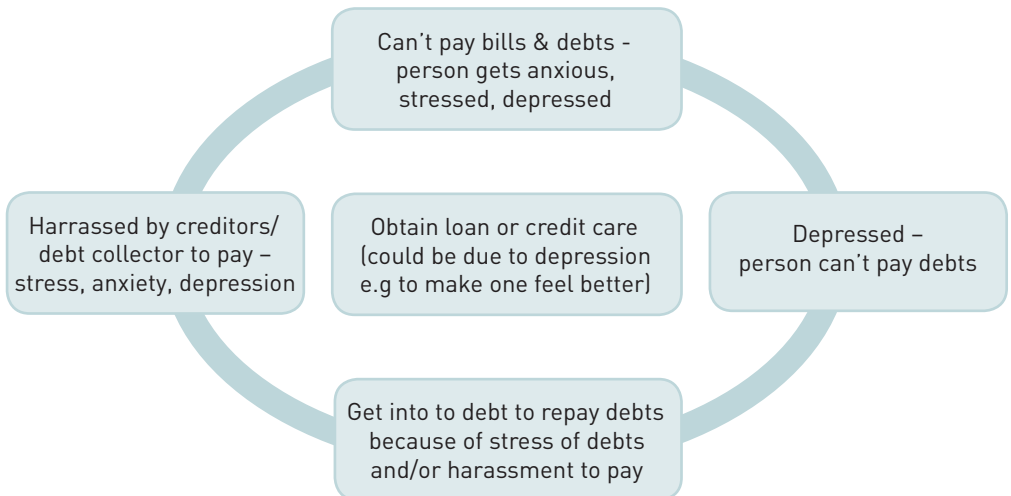
*"When you don't pay, the debt increases and the stress increases and you feel that you need extra finance to pay off the debts. But you're not better off, you fluctuate in and out."*

*"The debt gives you a criminal mind to get rid of the debt and you spiral out of control."*

*"You get a kick in the guts – the burden weighs on your shoulders and you're more vulnerable and the anxiety accumulates."<sup>1</sup>*

### Cycle of debt, depression and mental illness

*(Can enter the cycle at any point, but it is hard to exit)*



<sup>1</sup> Focus groups March 2010 from 'Smiling for the First Time: Bankruptcy for people with a mental illness. What happens when credit code remedies fail?'



The inability to pay debts, combined with demands from creditors, results in stressful situations for debtors and their families.

This stress and anxiety can be intensified for people from culturally and linguistically diverse communities for whom the Australian banking and financial system is quite different from the banking and financial systems in their countries of origin.

### Working with Clients with a Mental illness

It is best for the financial counsellor to work in collaboration with the client's mental health professional such as case manager, psychologist, or social worker. Often it is best for the mental health worker to accompany the client to the first appointment with the financial counsellor.

Working with a client with a mental illness requires allocating extra time and working at a slower pace. It may take three to four appointments before the financial counsellor can develop a trusting relationship with the client. Often people are embarrassed to talk about the debt and how the debt was incurred as they experienced a loss of judgement and capacity associated with their mental illness.

In addition there are clients who, due to the nature of their mental illness, find it difficult to use a generic service such as a financial counselling service. In these situations it may be appropriate for the financial counsellor to advise and work

with the mental health worker, with the client's consent.

It is also useful to involve the client's family if the family's views will influence the client's decision as to the best option for managing their debt. This is important as family members may have particular views about paying debts and debt management options that are based on a false impression of the debt situation and/or the client's options.

It is a good practice to give the client a plain language summary of the information and possible options that are given at each appointment. Clients with a mental health illness often need regular education and information about their situation, possible debt management options and the implications for themselves and their family. Providing summary information will assist in making clear what has been agreed and discussed with the financial counsellor, enabling the client to remember the details and sustain their relief from the anxiety and stress associated with the debts.

### Debt Management Options

Developing plans for payment or dealing with debts can substantially reduce the stress and anxiety for a client with a mental illness and also for their carer.

A person who suffers from episodic mental illness may make an **advance directive** which is a document prepared by a consumer to be used in case of a mental health crisis. The advance directive can include information with regard financial management. Whilst



the advance directive is not legally enforceable in Victoria it can assist to limit or prevent the financial harm occurring during a crisis and contribute to the wellbeing of the person living with mental illness.

## Ethics for Practice

The determination of the debt management option must be made by the clients and/or their guardian or administrator (e.g. State Trustees), sometimes in consultation with their mental health professional.

The client must agree to the release of any information about them (*Privacy Act 1988* (Commonwealth) Section 18). Initially, it is best to reveal as little as possible about a person's state of health to creditors. Details of the client's health status may be given with their approval as part of the debt negotiation process.

Working in the best interest of a client with a mental illness requires taking account of the:

1. mental health of the client.
2. financial and debt situation of the client and their financial goals. For example, many people will insist on paying debts to family, friends and their local community such as saving and loan clubs or debts to local stores. (They will not want to declare these debts as part of a bankruptcy.)
3. long-term impact on the client of implementing a particular option.
4. prognosis of the person's mental illness, in particular, assessment by the client, financial counsellor and

mental health professional of whether the behaviour associated with the mental illness that may have caused the indebtedness is likely to reoccur.

## Key Options

This is an outline of some key debt management options worth considering when working with a person who has a mental illness. It is not an extensive list of debt options available to financial counsellors.

At the outset, consider the **client's capacity**, as the client may have capacity for only less complex matters, or the episodic nature of mental illness may have affected their decision-making. Any contract may be unenforceable.

**Doing nothing** about the debt may not be a good option for clients with a mental illness due to the stress and anxiety associated with owing money and the demands made by credit providers and debt collectors seeking repayment of the monies. However, doing nothing may be appropriate if the debt is over the statute based time limit (six years for unsecured debts).

**Judgment Proof.** When a person's income is solely from a Centrelink payment, the creditor cannot demand instalment payments of a debt without the person's consent (*Judgment Debt Recovery Act 1984* (Vic) Section 12) and the Victorian Courts cannot garnishee income to pay debts or take ordinary household goods and personal items (*Supreme Court Act 1986*, (Vic) Section 42).



**Hardship Provisions** provide temporary relief from payment demands and harassment. The provisions enable a debtor to request a variation to a contract including postponing payment for a period and extending the period of a credit contract if the person is unable to pay a debt because of illness, but could pay the debt in the future (*National Consumer Credit Protection Act 2009* (Credit Act) (Commonwealth) Section 72A). Creditors are not obliged to agree to hardship applications.

A hardship provision can provide respite from demands for payment. However, the temporary nature of the relief provided by the hardship provision will frequently not relieve the stress and anxiety associated with owing money as the client knows that they still have to repay the debt.

**Special Circumstances Regarding Fines.** A person with a diagnosed mental illness can apply for special consideration to have fines, including speeding, drink/drug driving and open court fines, cancelled or have a more appropriate penalty reflecting their circumstances applied (Section 65 *Infringements Act* (Vic) 2006).

**Bankruptcy** for debtors with a mental illness requires the client to:

- understand bankruptcy, its implications and impacts, including having a record that sets out that a person has been a bankrupt on the National Personal Insolvency Index.
- have the capacity to provide informed consent to enter into bankruptcy.
- meet optimal criteria, i.e. not a wage earner and have no assets.

## CASE STUDY

Max who was working full time had a credit card and experienced periods of financial crisis. He was well for a few years, but then had a manic episode and 'maxed out' on bank credit cards to his limit of \$25,000. Max paid the minimum monthly payment of \$200, but could not maintain this arrangement. He went to a financial counsellor who informed him about debt options and bankruptcy, but Max wanted to repay the debt by \$50 instalments per fortnight. After paying \$50 a fortnight, for between two and three years, Max still owed \$20,000 even with no interest being applied to the account. He eventually declared voluntary bankruptcy. He is now discharged from bankruptcy and is running his own business. Since his discharge from bankruptcy, Max has bought a home and has obtained credit. Max now acknowledges that bankruptcy was successful for him. However, he initially did not want to go bankrupt because of the perceived stigma, and because he wanted to keep the debt secret and continue to use a credit card.







## Where to Go for Assistance

**Mental Health Legal Centre** provides a free and confidential legal service to anyone who has experienced mental illness in Victoria where their legal problem relates to their mental illness and provides advice with regard to advance directives.

*Phone 96294422.*

*[www.communitylaw.org.au/clc.mentalhealth](http://www.communitylaw.org.au/clc.mentalhealth)*

**Mental Health Advice Line** is a state-wide telephone information service available to all Victorians seeking mental health information, advice and referral for themselves or another person.

The service is staffed by mental health professionals who provide expert mental health advice 24/7, including public holidays. The service is available state-wide.

*Phone 1300 280 737*

*[www.health.vic.gov.au/mhal](http://www.health.vic.gov.au/mhal)*

**Beyond Blue** info line provides callers with access to information and referral to relevant services for depression and anxiety related matters.

*Phone 1300 22 4636*

*[www.beyondblue.org.au](http://www.beyondblue.org.au)*

## **Mental Illness Fellowship Victoria**

is a membership-based non profit organisation that provides people with a mental illness, as well as their family, friends and carers, community-based services. It also provides information about the network of services for people with a mental illness.

*Helpline (staffed by volunteers)*

*Phone 8486 4222*

*Organisation, phone 8486 4200*

*[www.mifellowship.org](http://www.mifellowship.org)*

## **The Victorian Mental Illness**

**Awareness Council (VMIAC)** is a Victorian not-for-profit organisation that provides support, advocacy and referrals to people who are experiencing, or have experienced in the past, emotional or mental distress.

*Phone 9380 3900*

*[www.vmiac.com.au](http://www.vmiac.com.au)*

## **Insolvency and Trustee Service**

**Australia (ITSA)** is responsible for: providing information about options to deal with unmanageable debt; providing registry services for the lodgement of forms relating to personal insolvency (voluntary bankruptcy); providing trustee services for the administration of insolvent estates and other types of trustee administrations. The Bankruptcy Act creates the roles of the Inspector-General in Bankruptcy, Official Receiver and the Official Trustee. ITSA performs all of these roles.

*Phone 1300 364 785*

*[www.itsa.gov.au](http://www.itsa.gov.au)*





**Special Circumstances and Eligibility regarding Fines: the Melbourne Magistrates' Court Enforcement Review Program**

Enforcement Review Coordinator

*Phone 96287902*

*[www.magistratescourt.vic.gov.au/wps/wcm/connect/Magistrates+Court/Home/Court+Support+Services/MAGISTRATES+-+Enforcement+Review+Program](http://www.magistratescourt.vic.gov.au/wps/wcm/connect/Magistrates+Court/Home/Court+Support+Services/MAGISTRATES+-+Enforcement+Review+Program)*

**Utility Relief Grants Scheme (URGS) Guidelines: Department of Human Services.**

This site also provides information on a range of concessions.

*[www.dhs.vic.gov.au/concessions](http://www.dhs.vic.gov.au/concessions)*

To locate a financial counsellor call

**Consumer Affairs Victoria.**

*Phone 1300 55 8181*

**Moneyhelp** is funded by Consumer Affairs Victoria provides a free phone financial counselling service Monday to Friday, 9.30am–5pm.

*Phone 1800 149 689*

Web information on how to manage money and debt is available at

*[www.moneyhelp.org.au](http://www.moneyhelp.org.au)*

**Financial Ombudsman Service**

independently resolves disputes between consumers and financial services providers including banks credit providers, general insurance and life insurance companies, financial planning, investments, stock broking, managed funds and pooled superannuation trusts. Its services are free to consumers.

*Phone 1300 78 0808*

*[www.fos.org.au](http://www.fos.org.au)*

**Credit Ombudsman Service Limited (COSL)**

is a dispute resolution scheme which assists consumers to resolve complaints with their financial services providers. 9.00am–5.00pm, Monday to Friday.

*Phone 1800138 422*

*[www.cosl.com.au](http://www.cosl.com.au)*

**Energy and Water Ombudsman**

**Victoria (EWOV)** receives, investigates and facilitates and resolves customer complaints about electricity, gas and water companies operating in Victoria. Its services are free to consumers.

*Phone 1800 500 709*

*[www.ewov.com.au](http://www.ewov.com.au)*

**The Telecommunications Industry Ombudsman**

is a free and independent alternative dispute resolution scheme for small business and residential consumers in Australia with unresolved complaints about their telephone or internet services.

*Phone 1800 062 058*

*[www.ito.com.au](http://www.ito.com.au)*

**The Public Transport Ombudsman**

deals with complaints about Victorian public transport that members of the community have been unable to resolve directly with the public transport operators. The service is free and independent of both public transport operators and the government.

*Phone 1800 466 865*

*[www.ptovic.com.au](http://www.ptovic.com.au)*



**Consumer Action Law Centre**, a campaign-focused consumer advocacy, litigation, policy and legal advice centre that provides free services.

*Phone 1300 881 020*

*[www.consumeraction.org.au](http://www.consumeraction.org.au)*

**Bulk Negotiation for Disadvantaged People: Protecting Basic Income**

Funded by Victoria Law Foundation at West Heidelberg Community Legal Service Inc., 21 Alamein Rd West Heidelberg.

A project aiming to protect people on very low incomes with no assets from exploitation by debt collectors. The project pilots a new process of selection of a bundle of cases and engaging in negotiation to resolution. Not all cases can be taken on, given the nature and objectives of the pilot.

Further information

*Phone 9450 2032*

*[lee.bonney@bchs.org.au](mailto:lee.bonney@bchs.org.au)*

**Consumer Utilities Action Centre Victoria(CUAC)** an independent consumer advocacy organisation, established to promote fair, equitable and more balanced regulatory outcomes in the electricity, gas and water industries, with a particular focus on low income, disadvantaged and rural and regional consumers.

*Phone 1300 656 767*

*[www.cuac.org.au](http://www.cuac.org.au)*



## EXAMPLE FORMAT FOR SUMMARY DEBT MANAGEMENT INFORMATION AND OPTIONS

CLIENT CONSIDERATIONS	MENTAL HEALTH ISSUE	FINANCIAL and DEBT SITUATION	FINANCIAL GOALS	FUTURE MENTAL HEALTH PROGNOSIS
Client's name: ..... Mental Health Worker name: .....				
OPTIONS	PROS OF THE ACTION – Long-term impact		CONS OF THE ACTION – Long-term impact	
Do nothing				
Defer repayments				
Reduce repayments				
Pro-rata arrangement (including Part IX)				
Capitalise arrears				
Extend loan term				
Consolidating debts				
Debt write off				
Hardship provisions				
Bankruptcy				