

**District Court (Protection of Judgement Debtors with Disabilities) Amendment Bill
Justice Select Committee**

Te Ope Whakaora – The Salvation Army New Zealand Fiji Tonga and Samoa Territory Submission

General Comments:

1. The Salvation Army **strongly supports** the passing of this Bill into law. This is a positive piece of legislation that will help protect a judgement debtor with a disability. However, the core of our submission is that greater reform of other related parts of the District Court Act 2016 (principal Act). In our view, the intent and rationale of this Bill should be extended to other aspects of law impacting on judgement debtors. Specifically, The Salvation affirms that greater protection is needed for judgement debtors who are beneficiaries and in extremely vulnerable positions. If the protections in this Bill can be enforced for those with disabilities, we submit it could be extended to other vulnerable judgement debtors, and so further reform of the principal Act is needed.

Background:

2. The mission of The Salvation Army is to **care for people, transform lives and reform society through God, in Christ and by the Holy Spirit's power.**¹ The Salvation Army is a Christian church and social services organisation that has worked in New Zealand for over one hundred and thirty years. It provides a wide range of practical social, community and faith-based services around the country.
 - a. The combined services of The Salvation Army provided support to around 120,000 people per year. These services included over 57,000 food parcels to more than 28,000 families and individuals, providing some 2,400 people with short- or long-term housing, nearly 7,000 families and individuals supported with social work or counselling, just over 17,000 addictions counselling sessions, more than 5,500 families and individuals helped with budgeting, other practical assistance to over 6,000 families and individuals, 6,500 hours of chaplaincy support, and some 9,000 victims, defendants and families supported at court.
3. This submission has been prepared by the Social Policy and Parliamentary Unit (SPPU) of The Salvation Army. The SPPU works towards the eradication of poverty by encouraging policies and practices that strengthen the social framework of New Zealand. This submission has been approved by Commissioner Mark Campbell, Territorial Commander of The Salvation Army's New Zealand Fiji Tonga, and Samoa Territory.

Responses to the Bill

4. The Salvation Army supports the passing of this Bill in law. This is not in question for us.
5. The crux of our submission is that we contend the government must look closer at reviewing and implementing stronger reforms in other related parts of the principal Act, as well as continued changes with associated credit contracts and consumer legislation. With this Bill, the government has indicated that is willing to reform the District Court Act which is very positive. The Salvation Army urges this select committee to *extend* their reforms of this Act beyond judgement debtors with disabilities and include judgement debtors who are beneficiaries and in other vulnerable social and financial situations. We submit that the civil or Court-mandated debt recovery process within the District Court Act is an area that urgently requires further scrutiny to ensure that beneficiaries are not placed under more unnecessary and unfair pressure. This is an area of injustice in the law and policy that must be reformed.
6. We recommend that a judgement proof debtor policy for judgement debtors who are welfare beneficiaries be implemented in the principal Act. This would be like the protections for judgement debtors with disabilities contained within this current Bill.
 - a. In 2018, The Salvation Army released an advocacy report titled *Debt collection and repossession in Aotearoa*.ⁱⁱ Within this paper, we made several recommendations about reforming our credit contracts and consumer finance laws further. We also recommended the implementation of a judgement proof debtor policy for beneficiaries.
 - b. The core of this idea is that if a person in significant financial hardship qualifies for judgement-proof debtor status, they cannot be forced to repay their debts (under the current District Court provisions) using their government welfare benefit.
 - c. In Victoria, Australia, Section 12 of the Judgment Debt Recovery Act provides that, an instalment order will not (unless the debtor consents) be made if the income of the judgment debtor is derived solely from a pension benefit allowance or other regular payment under the Social Security Act 1947 or section 24 of the Children, Youth and Families Act 2005 (Vic). The Victorian policy has some specific criteria, including that the potential judgment-proof debtor cannot own a house or have too many assets.ⁱⁱⁱ
 - d. In an April 2019 article, Joseph Numweek delved deeper into the use of attachment orders on beneficiaries including how these orders lock them into increased cycles and spirals of problem debt.^{iv} Numweek argued that there has been a marked increase in the use of attachment orders in the last 5 years, particularly since 2014 when the process of obtaining an attachment order was simplified. These changes meant a creditor could apply for an attachment order without first having to get a separate assessment of the debtor's financial means. In 2015, the Commerce Commission reported that in the year since the new attachment order process was implemented, more than 1,000 orders were made per month, compared with around 200 orders per month in the previous year, before the changes.^v Numweek reported that Ministry of Justice figures supplied to him showed that in 2018, 4,479 attachment orders for a civil debt were issued against beneficiaries. This is compared with 5,527 orders made against employed people who are more likely to

be able to repay their debt simply because they are employed. The enforcement of debt recovery through this process, particularly in relation to beneficiaries who are already in precarious positions, is a policy area that we contend must change soon to ensure those in financial hardship and who have orders against them do not fall into further problem-debt spirals.

- e. Again, we strongly urge this committee to extend the protections in this current Bill for people with disabilities to beneficiaries who would qualify for judgement debtor proof status like the policy in Melbourne discussed above. Between 70-80% of our Salvation Army clients have a government welfare payment as their main source of income. We believe this kind of policy will greatly help beneficiaries in already difficult financial circumstances. Our frontline budgeters and financial mentors have numerous cases and examples of oppressive attachment orders and orders for examinations taken out against beneficiaries for debts they owe under the District Courts Act. We acknowledge that debts must be repaid if possible. But placing already vulnerable debtors/beneficiaries under these often-restrictive District Court Act proceedings is akin to what Numweek calls *waging war against the poor*.
 - f. This is an area that *can* be changed as is seen in this current Bill protecting judgment debtors who have disabilities. The appetite and ability to positively reform the principal Act is clearly here. The Salvation Army calls on this committee and the government to extend this further to beneficiaries.
7. Finally, as a secondary matter, we acknowledge that another key aspect of the laws and policies relating to credit contracts and consumer finance related to this Bill is the urgent need for a clearer and stronger debt collection law for our country. The Salvation Army over the last few years has joined many other organisations in advocating for a new piece of legislation focussed on debt collection. The legislative framework here is confusing and sits in multiple Acts of Parliament. We submit there is a case for a new piece of legislation to be developed by Parliament that can comprehensively regulate debt collection and repossession. In the 2015 review into their debt collection industry, the Australian Competition and Consumer Commission found that increased regulatory oversight led to better and more ethical debt collection behaviour.^{vi} We submit a clear, unified new piece of legislation that regulates all aspects of debt collection (whether private or court-mandated) would protect vulnerable consumers and help strengthen the debt collection industry.

ⁱ Retrieved from <https://www.salvationarmy.org.nz/church-community/resources>

ⁱⁱ Retrieved from https://www.salvationarmy.org.nz/sites/default/files/files/%5Bfile_field%3Atype%5D/20191014_sppu_debt_collection_aotearoa.pdf

ⁱⁱⁱ Ibid, page 23.

^{iv} Retrieved from <https://thespinoff.co.nz/politics/23-04-2019/how-winz-debt-collection-arms-the-war-on-the-poor/>

^v Retrieved from <https://www.stuff.co.nz/business/money/72358546/massive-spike-in-court-ordered-debtor-wage-deductions---commerce-commission>

^{vi} Retrieved from https://www.accc.gov.au/system/files/Research%20into%20the%20Australian%20debt%20collection%20industry_0.pdf