



Federal Court of Australia

District Registry: Victoria

Division: General

No: VID1252/2019

KATHERINE PRYGODICZ and others named in the schedule
Applicant

COMMONWEALTH OF AUSTRALIA
Respondent

ORDER

JUDGE: JUSTICE MURPHY

DATE OF ORDER: 06 March 2020

WHERE MADE: Melbourne

THE COURT ORDERS THAT:

Pleadings

1. By 4.00 pm on 16 March 2020 the Applicants are to file and serve any amended statement of claim.
2. By 4.00 pm on 30 March 2020 the Respondent is to file and serve its defence to the amended statement of claim.

Discovery

3. By 4.00 pm on 4 May 2020 the Applicants' are to provide discovery of:
 - (a) all communications with Centrelink relating to the debts identified in the statement of claim; and
 - (b) all documents relating to their claims for damages including medical reports.
4. By 4.00 pm on 11 May 2020, the Respondent is to provide discovery of the documents set out in **Annexure A**.
5. By 4.00 pm on 25 May 2020, the parties are to meet and confer in the presence of a National Judicial Registrar to endeavour to agree on what, if any further tranches of discovery of documents are required in the proceedings which, having regard to the



pleadings filed by the parties, are likely to be directly relevant to the proceeding, and are able to be produced readily and relatively inexpensively by the parties.

Notice to Class Members and Opt Out

6. Pursuant to s 33J(1) of the FCAA, 4.00 pm on 29 June 2020, be fixed as the time and date before which a Group Member may opt out of this proceeding.
7. Pursuant to s 33X of the FCAA, notice of this proceeding, and of the right of Group Members to opt out of the proceeding, is to be given to Group Members in accordance with Order 9 and following below.
8. Pursuant to s 33Y(2) of the FCAA, the form and content of the notice set out in **Annexure B (Notice)** is approved.
9. Pursuant to s 33Y(3) of the FCAA, the Notice is to be given to all Group Members by 4.00 pm on 25 May 2020 according to the following procedure:
 - (a) using its best endeavours the Respondent shall use its own resources to identify, the names of all Group Members, the MyGov account details of those Group Members who have a MyGov account linked to Services Australia, and their last known contact details held by the Respondent; and
 - (b) where possible the Respondent shall cause the Notice to be sent to each Group Member's MyGov Account which is linked to Services Australia;
 - (c) where a Group Member does not have a MyGov account linked to the Respondent will use its best endeavours to send the Notice by mail to the Group Members last known address.
10. Pursuant to s 33Y(3) of the FCAA, the Applicants shall, by 4.00 pm on 25 May 2020, cause a copy of the Notice, together with a copy of: (a) the Applicants' Originating Application dated 20 November 2019, the Applicants' Statement of Claim (as amended pursuant to these Orders) and the Respondent's Defence (as amended pursuant to these Orders), along with the Reply filed by the Applicants on 28 February 2020, along with a copy of these orders, to be displayed on, or otherwise made available for download from, the website of the Applicants' solicitors (www.gordonlegal.com.au) and to remain continuously so displayed or available up to



and including, the date any judgement is delivered following the Trial of this Proceeding.

11. The parties consult during the week commencing 8 June as to whether or not the class notification process set out in order 9 above has been effective or whether further steps need to be taken and report to the Court on or before 12 June 2020.
12. The parties have liberty to apply in relation to the adequacy of class notification as set out in order 9 above.
13. The costs borne by the Respondent, referred to in Order 9 above, shall be paid in the first instance by the Respondent but ultimately be costs in the cause, and otherwise the costs of each party of and incidental to the procedure set out in Orders 9 to 12 above shall be costs in the cause. For the avoidance of doubt, reasonable work done in answering enquiries by class members and members of the public in relation to the Notice and/or the proceeding generally is work incidental to Orders 9 to 12 above.
14. The Notice may be amended by the Applicants or Respondent's solicitors before it is published in order to correct any website or email address or telephone number or other non-substantive error.
15. If the solicitors for any party receive, on or before 4.00 pm on 29 June 2020, a notice purporting to be an opt out notice referable to this proceeding, the solicitors shall file the notice in the Victoria District Registry of the Court within three business days, and the notice shall be treated as an opt out notice received by the Court at the time it was received by the solicitors.
16. The Applicants' solicitors and the Respondent's solicitors have leave to inspect the Court file and copy any opt out notices filed.

Affidavit Evidence

17. On or before 4:00 pm on 1 May 2020, the Applicants file and serve any lay affidavit evidence on which they intend to rely.
18. On or before 4:00 pm on 22 May 2020, the Respondent file and serve any lay affidavit evidence on which it intends to rely.



Mediation

19. The parties conduct a mediation by 19 June 2020.
20. If the matter does not settle at the mediation, the matter is listed for a pre-trial case management hearing on 26 June 2020 at 9.30 am.

Joint List of Factual and Legal Issues

21. By 29 June 2020 the Applicants to prepare and provide to the Respondent a list of the factual and legal issues in the matter. By 2 July 2020 the Respondent to add any further issues to this list. The Applicants to file a joint list of factual and legal issues immediately thereafter.
22. By 6 July 2020 the Applicants to file a template for written submissions that has been agreed with the Respondent comprising a framework within which each party can set out its written submissions on each of the factual and legal issues identified in the list.
23. The template for written submissions will substantially form the framework of any opening written submissions to be made. The template will be added to and updated as evidence is heard, and likely varied as the positions taken by the parties change. In its updated and varied form it will substantially form the framework of any closing written submissions. The Court will assume that it is only the factual and legal issues raised in the template for written submissions that it is required to consider, and that the parties do not rely on any other matter.

Other Trial Preparations

24. By 14 July 2020 the Applicants to file a Court Book.
25. By 14 July 2020 the parties to file a joint book of authorities.
26. By 14 July 2020 the Applicants to file their written submissions in accordance with the template.
27. By 16 July 2020 the Respondent to file its written submissions in accordance with the template.



Trial

28. The proceeding is tentatively listed for trial of the personal claims of the Representative Applicants and all common issues on 20 July 2020 on an estimate of 8 days. If the hearing cannot commence on or about 20 July 2020, the matter will be listed for trial on 21 September 2020.

Other

29. Costs be reserved.

30. Liberty to apply.

Date that entry is stamped: 6 March 2020

Sia Lagos
Registrar



Schedule

No: VID1252/2019

Federal Court of Australia
District Registry: Victoria
Division: General

Second Applicant	ELYANE PORTER
Third Applicant	STEVEN FRITZE
Fourth Applicant	FELICITY BUTTON
Fifth Applicant	SHANNON THIEL



ANNEXURE A

Applicants' proposed initial discovery orders

1. By 4.00 pm on 11 May 2020, the Respondent provide initial discovery, comprising the following documents:
 - (a) The following documents identified on the Services Australia Operational Website (<http://operational.humanservices.gov.au/>) (the **Services Australia Website** during the period of the Robodebt System:
 - (i) The document identified by File Number 110- 09000000) 'Compliance and Review Content' webpage and any protocol Pay-As-You-Go (PAYG) Data-Matching policy;
 - (ii) The EIC Online Compliance Intervention documents identified with File Numbers 110-13090000; 110-13090010; 110-13090020; on the Services Australia Website 'Compliance and Review Content' webpage;
 - (iii) The Earned Income Intervention Documents identified with File Numbers 110-13010000, 110-13010010, 110-13010030, 110- 13010050, 110-13010060, on the Services Australia Website 'Compliance & Review Content' webpage;
 - (iv) The 'Debt' Documents sequentially numbered from the File Name '107-01000000' to the File Name '107-190603358' inclusive, referred to in the Services Australia Website 'Debts Content' webpage, save for the following documents which are excluded:
 - I. Documents sequentially numbered from 107-04020050 to 107-04130010 inclusive; and
Documents sequentially numbered from 107-01920000 to 107-09120080 inclusive.
 - (v) Each of the 'Review of Decision & Appeals' Documents sequentially numbered from the File Name '109-01000000' to File Name '109-030300000' inclusive, along with the specific documents identified with the File Names '109-04000000', '109-04010000' and '109-04020000' referred to on the Services Australia Website 'Review of Decision & appeals content' webpage;
 - (vi) Any Operational Blueprints not already identified in this paragraph



outlining the process to be followed by the Respondent, its staff or contractors in implementing customer support or compliance processes under the Online Compliance Intervention (OCI), Employment Information Confirmation (EIC) or Check and Update Past Income (CUPI) Processes including any described as a 'Customer Support for Compliance Intervention Blueprint'; and

- (vii) The business case for the Robodebt System;

together with any revisions or superseded versions of those critical policy documents from 1 July 2015 to date.

- (b) The following documents, from 1 July 2015 to date of institution of these proceedings:
 - (i) relevant portions of the Incoming Government Brief for the Coalition Government following the 2019 election (together with all attachments), and
 - (ii) relevant portions of all Briefing Notes prepared by Services Australia (or its predecessors) (together with all attachments) to the Minister:

that describe the development, implementation, use of, conduct of, and/or limitations of:

- (i) the Robodebt System,
- (ii) data-matching techniques used by the Respondent under the Robodebt System;
- (iii) the number, reasons for, basis of and prevalence of limitations and/or errors in Asserted Overpayment Debt amounts identified as a result of use of the Robodebt System;
- (iv) the capacity and adequacy of the Respondent to deliver the Robodebt System, including its use of third-party contractors;
- (v) any limitations/errors identified in the issuing of Robodebt Raised Debts; the causes of those limitations/errors, and what steps were taken when limitations/errors were identified including, whether procedures were put in place to prevent them;
- (vi) the Respondent's use of, and reasons for use of debt collectors to pursue Robodebt Raised Debts;



- (vii) the raising of Asserted Overpayment Debts, or conduct of those debts against any of the Applicants; and
- (c) Pro-forma Letters sent to recipients of Social Security Payments under the Robodebt System;
- (d) Call logs or recordings of all phone calls between Services Australia, its officers, contractors or agents and each of the representative applicants;
- (e) The contracts between the Respondent and:
 - (i) any personnel service providers (for example customer services officer, call centre or other personnel contracts); and
 - (ii) debt collection agencies (including any of Dun & Bradstreet (Australia) Pty Ltd and the Probe Group).

that refer or relate to the development, implementation, use of, or conduct of the Robodebt System;

- (f) All training manuals produced for or on behalf of the Respondent with respect to the implementation and conduct of the Robodebt System, for the use of its employees, or third parties contracted to deliver services to the Respondent to preform work under the Robodebt System.



ANNEXURE B
OPT OUT NOTICE
FEDERAL COURT OF AUSTRALIA

'Robodebt' (Social Security Debt Collection) Class Action (VID1252/2019)

1. Why is this notice important?

A class action has been commenced in the Federal Court of Australia by Katherine Prygodicz and others against the Commonwealth of Australia. The action alleges that the alleged debts calculated by Centrelink on the basis of differences between income information obtained by Centrelink from the Australian Taxation Office and information that Centrelink used to assess Centrelink payments were unlawful, and that the Commonwealth is liable in unjust enrichment or negligence (or both) for any money that it has obtained in relation to the alleged debts, sometimes known as 'robodebts'.

The Federal Court has ordered that this notice be published for the information of persons who might be members of the class on whose behalf the action is brought and may be affected by the action. You have been identified as a potential class member. **You should read this notice carefully. Any questions you have concerning the matters contained in this notice should not be directed to the Court.** If there is anything in it that you do not understand, you should seek legal advice.

2. What is a class action?

A class action is an action that is brought by one or more persons ("**Applicants**") on his or her own behalf and on behalf of a class of people ("**class members**") against another person ("**Respondent**") where the Applicants and the class members have similar claims against the Respondent.

Class members in a class action **are not** individually responsible for the legal costs associated with bringing the class action. In a class action, only the Applicants are responsible for the costs.

Class members are "bound" by the outcome in the class action, unless they have opted out of the proceeding. A binding result can happen in two ways being either a *judgment* following a trial, or a *settlement* at any time. If there is a judgment or a settlement of a class action class members *will not* be able pursue the same claims and *may not* be able to pursue similar or related claims against the Respondent in other legal proceedings. Class members should note that:

- (a) in a *judgment* following trial, the Court will decide various factual and legal issues in respect of the claims made by the Applicants and class members. Unless those decisions are successfully appealed they bind the Applicants, class members and the Respondent. Importantly, if there are other proceedings between a class member and the Respondent, it may be that neither of them will be permitted to raise arguments in that proceeding which are inconsistent with a factual or legal issue decided in the class action.



- (b) in a *settlement* of a class action, where the settlement provides for compensation to class members it may extinguish *all* rights to compensation which a class member might have against the Respondent which arise in any way out of the events or transactions which are the subject-matter of the class action.

If you consider that you have claims against the Respondent which are based on your individual circumstances or otherwise additional to the claims described in the class action, then it is important that you seek independent legal advice about the potential binding effects of the class action **before** the deadline for opting out (see below).

3. What is this class action?

This class action is brought by the Applicants on their own behalf and on behalf of all persons who are “class members” as defined in the proceeding.

The Applicants allege in the statement of claim in this proceeding that since 1 July 2015, Centrelink has sent to class members a notification (by mail, email, ‘myGov’ or the ‘Centrelink Express’ app) claiming that there was a difference between the income information obtained by Centrelink from the Australian Taxation Office and that used by Centrelink in assessing Centrelink payments, claiming that class members had been overpaid, and demanded that the claimed overpayment had to be paid back. Class members have received these demands and have paid, had paid on their behalf, or had recovered from them (by, for example, demands from debt collectors, or having had their tax returns garnished) amounts for these claimed overpayments.

The Applicants allege that Centrelink had no right to demand or recover any part of these overpayments, and that in doing so, the Commonwealth has been unjustly enriched, and has been negligent.

The Respondent to the class action is the Commonwealth of Australia, being the legal entity responsible for Centrelink. The Respondent admits that it has made demands and recovered parts of some overpayments, but says that in some cases, there was a valid basis known as a ‘juristic reason’ to recover the overpayments because the recipients were actually overpaid. The Applicants say that there is no such thing as a ‘juristic reason’ in Australian law. The Respondent denies that it was negligent as alleged by the Applicants.

4. What is ‘Opt Out’?

The Applicants in a class action do not need to seek the consent of class members to commence a class action on their behalf or to identify a specific class member. However, class members can cease to be class members by opting out of the class action. An explanation of how class members are able to opt out is found below in the section headed “How can you opt out of the proceeding”.

5. Are you a class member?

You are a class member if you:

- (a) at any time after 1 July 2010 received from the Commonwealth (through Centrelink) one or more payments of:
- (a) Newstart Allowance;



- (b) Youth Allowance;
- (c) Disability Support Pension;
- (d) Austudy Allowance;
- (e) Age Pension;
- (f) Carer Payment;
- (g) Parenting Payment;
- (h) Partner Allowance;
- (i) Sickness Allowance;
- (j) Special Benefit;
- (k) Widow A Allowance; and
- (l) Widow B Pension,

and

- (b) in respect of whom the Commonwealth, at any time after 1 July 2015:
 - (i) generated correspondence or other notification (including by postal mail, email or through 'myGov' or 'Centrelink Express') referring to a difference between the income information obtained by Centrelink from the Australian Taxation Office and that used by Centrelink in assessing Centrelink entitlements and requesting, requiring or reminding you to check, confirm or update employment income information (**Robodebt notification**); and
 - (ii) by or following the Robodebt notification, asserted an overpayment of one or more Centrelink payments recoverable by the Commonwealth as a debt (**Asserted Overpayment Debt**); and
 - (iii) requested or demanded repayment of any Asserted Overpayment Debt or part thereof; and
- (c) who:
 - (i) have paid, had paid on their behalf, or had recovered from them, any Asserted Overpayment Debt or part thereof; and/or
 - (ii) have not been informed by the Commonwealth that no recovery action will be pursued in respect of their Asserted Overpayment Debt.

If you are unsure whether or not you are a class member, you should contact Gordon Legal on 03 9603 300 or email robodebt@gordonlegal.com.au or seek your own legal advice without delay.

6. Will you be liable for legal costs if you remain a class member?

You will **not become liable for any legal costs** simply by remaining as a class member for the determination of the common questions. However:



- (a) if the preparation or finalisation of your personal claim requires work to be done in relation to issues that are specific to your claim, you can engage Gordon Legal or other lawyers to do that work for you. A copy of the terms on which Gordon Legal are acting in the class action may be obtained from them on the number shown below;
- (b) if any restitution or compensation becomes payable to you as a result of any order, judgment or settlement in the class action, the Court may make an order that some of that compensation be used to help pay a share of the costs which are incurred by the Applicants in running the class action but which are not able to be recovered from the Respondent; and
- (c) class actions are often settled out of court. If this occurs in the class action, you may be able to claim from the settlement amount without retaining a lawyer.

7. What will happen if you choose to remain a class member?

Unless you opt out, you will be bound by any settlement or judgment of the class action. If the class action is successful you will be entitled to share in the benefit of any order, judgment or settlement in favour of the Applicants and class members, although you may have to satisfy certain conditions before your entitlement arises. If the action is unsuccessful or is not as successful as you might have wished, you will not be able pursue the same claims and may not be able to pursue related claims against the Respondent in other legal proceedings.

8. What class members need to do

(a) How you can remain a class member?

If you wish to remain a class member there is **nothing you need to do** at the present time. The Applicants will continue to bring the proceeding on your behalf up to the point where the Court determines those questions that are common to the claims of the Applicants and the class members. However, you are invited to contact the Applicants' lawyers, Gordon Legal, at <https://gordonlegal.com.au/robodebt-class-action/> and register as a class member so that future notices about the class action can be sent to your preferred address.

(b) How you can opt out of the class action?

If you do not wish to remain a class member you must opt out of the class action. If you opt out you will not be bound by or entitled to share in the benefit of any order, judgment or settlement in the class action, but you will be at liberty to bring your own claim against the Respondent, provided that you issue Court proceedings within the time limit applicable to your claim. If you wish to bring your own claim against the Respondent, you should seek your own legal advice about your claim and the applicable time limit **prior** to opting out.

If you wish to opt out of the class action you **must** do so by completing a **"Notice of opting out by class member"** in the form shown below (Form 21 of the Court's approved forms), then returning it to the Registrar of the Federal Court of Australia at the address on the form. **IMPORTANT: the Notice must**



reach the Registrar by no later than 29 June 2020, otherwise it will not be effective.

You should submit the Notice of opting out by class member if:

- (i) you qualify as a class member and you wish to opt out of the class action;
or
- (ii) you believe that you have been incorrectly identified as a class member, because you do not meet the criteria set out in the section headed “Are you a class member” above.

Each class member seeking to opt out should fill out a separate form.

9. Where can you obtain copies of relevant documents?

Copies of relevant documents, including the application, the statement of claim, and the defence or defences, may be obtained by:

- (a) downloading them from <https://gordonlegal.com.au/robodebt-class-action/>;
- (b) inspecting them between 9am and 5pm at one of the offices of Gordon Legal, contact details for which are available from <https://gordonlegal.com.au/> or by calling 03 9603 3000;
- (c) by contacting a District Registry of the Federal Court (contact details are available www.fedcourt.gov.au) and paying the appropriate inspection fee; or
- (d) where appropriate arrangements have been made with the Court, inspecting them on the Federal Court website at www.fedcourt.gov.au.

Please consider the above matters carefully. If there is anything of which you are unsure, you should contact Gordon Legal on 03 9603 3000 or email robodebt@gordonlegal.com.au or seek your own legal advice. You should not delay in making your decision.



Form 21
Rule 9.34

OPT OUT NOTICE

No. VID 1252 of 2019

Federal Court of Australia
District Registry: Victoria
Division: General

Katherine Prygodicz and others
Applicants

Commonwealth of Australia
Respondent

To: The Registrar
Federal Court of Australia
Victoria District Registry
305 William Street
Melbourne VIC 3000

[Name of group member], a class member in this class action, gives notice under section 33J of the *Federal Court of Australia Act 1976*, that [Name of group member] is opting out of the class action.

Date: [eg 19 June 20..]

.....
Signed by [Name]
[Insert capacity eg group member / Lawyer for the group member]

.....
Filed on behalf of (name & role of party) _____
Prepared by (name of person/lawyer) _____
Law firm (if applicable) _____
Tel _____ Fax _____
Email _____
Address for service
(include state and postcode) _____

[Version 2 form approved 9/10/13]