

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 3/08/2020 4:51:34 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Reply - Form 34 - Rule 16.33
File Number: VID1252/2019
File Title: KATHERINE PRYGODICZ & ORS v COMMONWEALTH OF AUSTRALIA
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 3/08/2020 4:51:38 PM AEST

A handwritten signature in blue ink that reads 'Sia Lagos'.

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Amended Reply

No. VID 1252 of 2019

Federal Court of Australia

District Registry: Victoria

Division: General

Kathrine Prygodicz (and others named in the schedule)

Applicants

The Commonwealth of Australia

Respondent

By way of reply to the Commonwealth's Defence to Further Amended Statement of Claim dated ~~14 February 2020~~ 20 July 2020, the Applicants say as follows (adopting the definitions used in the Further Amended Statement of Claim dated ~~19 November 2019~~ 1 July 2020 as further amended from time to time unless otherwise stated):

1. As to paragraphs 50.1.4, 50.5.4, 50.6.2, 51.1.3, 51.5.3 and 51.6.3, the Applicants say that if and to the extent that the Commonwealth was but is no longer enriched at the expense of any Applicant or Group Member, the Commonwealth remains liable to make restitution of any interest or other benefit obtained by the Commonwealth by reason and during the period of the enrichment.
2. As to paragraphs 53, 58, 59, 61 and 63, the Applicants say:
 - (a) the existence of a "juristic reason" is not an element or requirement of, or a defence or answer to, a claim for restitution under Australian law and provides no basis for the retention by the Commonwealth of all or any part of the amounts by which it was enriched at the Applicants' and/or Group Members' expense;

Filed on behalf of (name & role of party)	Kathrine Prygodicz & Ors – the Applicants		
Prepared by (name of person/lawyer)	James Naughton		
Law firm (if applicable)	Gordon Legal		
Tel	+61 (3) 9603 3018	Fax	+61 (3) 9603 3050
Email	jnaughton@gordonlegal.com.au		
Address for service	Gordon Legal, Level 22, 181 William Street, Melbourne, VIC 3000		

- (b) in the premises, those paragraphs of the Defence are embarrassing and ought be struck out;
- (c) further or alternatively, to the extent that the existence of a “juristic reason” is an element or requirement of, or a defence or answer to, a claim for restitution under Australian law:
 - (i) by reason of the matters pleaded in paragraphs 42 to 65 of the Further Amended Statement of Claim (as further amended from time to time), the Commonwealth obtained all or part of every Commonwealth recovered amount unlawfully and without power or legal right, further and alternatively by a process and means tainted, including by unlawfulness and absence of power or legal right;
 - (ii) further or alternatively, by reason of the matters pleaded in paragraphs 42 to 65 of the Further Amended Statement of Claim (as further amended from time to time), the “rights” upon which the Commonwealth relies as a “juristic reason” for retention of enrichments had not arisen, crystallised or vested in the Commonwealth at the time of the enrichments, alternatively at the time the Applicants and Group Members demanded restitution, alternatively have not yet arisen, crystallised or vested;
 - (iii) further or alternatively, by reason of the matters pleaded in paragraphs 45 to 65 of the Further Amended Statement of Claim (as further amended from time to time) the “rights” upon which the Commonwealth relies as a “juristic reason” for retention of enrichments are incapable of being, alternatively have not been, calculated or quantified, alternatively validly calculated or quantified;
 - (iv) in the premises, the matters relied upon by the Commonwealth do not constitute any or any sufficient “juristic reason” such as may entitle the Commonwealth to retain all or any part of the amounts by which it was enriched at the Applicants’ and/or Group Members’ expense;
 - (v) further or alternatively, in the premises it would be inequitable and unconscionable for the Commonwealth to rely upon the matters pleaded as constituting a “juristic reason” entitling the Commonwealth

to retain all or any part of the amounts by which it was enriched at the Applicants' and/or Group Members' expense;

(vi) further or alternatively, it would be inequitable and unconscionable for the Commonwealth to rely upon the matters pleaded as constituting a "juristic reason" entitling the Commonwealth to retain all or any part of the amounts by which it was enriched at the Applicants' and/or Group Members' expense by reason and from the time of the Commonwealth's knowledge of each of the following matters;

1. the Administrative Appeals Tribunal made multiple determinations that Robodebt-raised debts were not debts owed to the Commonwealth because the fortnightly income assumption was insufficient to create a debt and no debt or debt component was able to be founded on extrapolations from Australian Tax Office records (**the AAT Unlawful Debt Decisions**), including:
 - a. the decision of Member Carney of 8 March 2017 in proceeding 2016/S104681;
 - b. the decision of Member Tremble of 24 March 2017 in proceeding 2016/M103550;
 - c. the decision of Member Carney of 20 April 2017 in proceeding 2016/S104394;
 - d. the decision of Member Carney of 25 August 2017 in proceeding 2017/M113469;
 - e. the decision of Member Carney of 7 September 2017 in proceedings 2017/M112147 and M112302 and proceeding 2017/S112884;
 - f. the decision of Member Carson of 15 February 2019 in proceeding 2018/130056;
 - g. the decision of Member Sperling of 3 December 2019 in proceeding 2019/M142370;
2. section 8(f) of the SSA provided that in administering the social security law, the Secretary was to have regard to the need to

apply government policy in accordance with the law and with due regard to relevant decisions of the Tribunal, which included the AAT Unlawful Debt Decisions;

3. the information contained in a document titled "Minister's office Information Request" dated 25 January 2017, which: provided an incomplete response to certain questions asked by Minister Tudge's Office; indicated that 4,884 of 5,629 (86%) completed reviews of debts from the OCI iteration of the Robodebt System in 2016-2017 that had been reassessed had resulted in a decrease in the amount of the debt said to be owing; and, stated that remaining data would be provided in a subsequent information brief;
4. the information contained in a document titled "Department of Human Services Executive Minute" dated 6 September 2018, which identified over 900,000 "customers" with discrepancies arising from matching income in the 2016-17 financial year "worth investigating"; and identified a number of possible explanations for those discrepancies, including that the basis of ATO data collection was for a financial year, and not for lesser periods.
5. the terms of the consent orders and declarations made 27 November 2019 and the statement of agreed facts upon which these were based in the Federal Court of Australia (Davies J) in *Amato v Commonwealth of Australia* VID611 of 2019;
6. no Robodebt-raised debt or associated penalty in respect of any Applicant or Group Member was or is a debt due to the Commonwealth within the meaning of section 1222A of the SSA and the Commonwealth had and has no statutory or other power to raise and recover or seek to recover any Asserted Overpayment Debt, or impose any penalty thereon, in respect of any Applicant or Group Member;
7. the matters pleaded in paragraph 69 of the Further Amended Statement of Claim (as further amended from time to time) and the fact that the representative applicants and Group Members were part of a vulnerable cohort of social security recipients that

included people with mental health problems, disabilities and difficult financial circumstances.

3. As to paragraph 65, the Applicants say that it is inequitable and unconscionable for the Commonwealth to condition the entitlement of a Group Member to the return of an amount paid in respect of an Asserted Overpayment Debt upon the review of a decision as described in paragraph 65.1.2, in circumstances where the Commonwealth:

- (a) has made the announcements pleaded to in paragraph 18 of the Defence; and
- (b) knows, or ought to know, that an Asserted Overpayment Debt answers the description in paragraph 65.1.1 of the Defence,

4. As to paragraph 71, the Applicants say:

(a) As to sub-paragraph 71.2, it is not a condition or criterion for the imposition upon a public authority of a common law duty of care that any statute expressly imposes or mentions a requirement that due or reasonable care be exercised by the authority in the discharge of statutory powers or functions;

(b) As to sub-paragraphs 71.3 and 71.4:

(i) the matters expressly referred to in the Social Security Law (as that term is defined in the Commonwealth's Defence) to which sub-paragraphs 71.3 and 71.4 refer are not the only matters to which the Secretary must have regard in the administration thereof and are not the only matters relevant to the existence and scope of any duty of care owed by the Commonwealth in the exercise or discharge of the Commonwealth-controlled functions and other conduct referred to in paragraph 71 of the Further Amended Statement of Claim (as further amended from time to time);

(ii) the matters to which the Secretary must have regard in the administration of the Social Security Law include those in:

- 1. section 8(f) of the SSA which requires that in administering the social security law, the Secretary is to have regard to the need to apply government policy in accordance with

the law and with due regard to relevant decisions of the Tribunal; and

2. the provisions of the SSA as pleaded in paragraphs 42 to 49 of the FASOC (as further amended from time to time);

(iii) the matters relevant to the existence and scope of any duty of care owed by the Commonwealth in the exercise or discharge of the Commonwealth-controlled functions and other conduct referred to in paragraph 71 of the Further Amended Statement of Claim include those pleaded in paragraphs 66 to 70 of the Further Amended Statement of Claim (as further amended from time to time);

(iv) there could be no inconsistency between the requirements imposed upon officers administering the Social Security Law (as that term is defined in the Commonwealth's Defence) and the imposition of a duty of care upon the Commonwealth as alleged in paragraph 71 of the Further Amended Statement of Claim (as further amended from time to time), having regard to:

1. section 8(f) of the SSA which requires that in administering the social security law, the Secretary is to have regard to the need to apply government policy in accordance with the law and with due regard to relevant decisions of the Tribunal; and

2. the provisions of the SSA as pleaded in paragraphs 42 to 49 of the FASOC.

5. Save as aforesaid, and save for any admissions, the Applicants join issue.

Date: ~~29 July~~ 3 August 2020

A handwritten signature in black ink, appearing to be 'J. Naughton', with a horizontal line extending to the right.

Signed by James Naughton
Lawyer for the Applicants

This pleading was prepared by: B.F. Quinn

Georgina A. Costello

Min W. Guo

David Seeman

Andrew C. Roe

Certificate of lawyer

I James Naughton certify to the Court that, in relation to the reply filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: ~~29 July~~ 3 August 2020

A handwritten signature in black ink, appearing to be 'J. Naughton', with a horizontal line extending to the right.

Signed by James Naughton
Lawyer for the Applicants