

NOTICE OF FILING

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Details of Filing

Document Lodged: Defence - Form 33 - Rule 16.32
File Number: VID1252/2019
File Title: KATHERINE PRYGODICZ & ORS v COMMONWEALTH OF AUSTRALIA
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 6/11/2020 9:19:00 AM AEDT

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.



Form 33
Rule 16.32

DEFENCE TO SECOND FURTHER AMENDED STATEMENT OF CLAIM

FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: VICTORIA
DIVISION: GENERAL

NO VID 1252 OF 2019

KATHERINE PRYGODICZ AND OTHERS

Applicants

THE COMMONWEALTH OF AUSTRALIA

Respondent

To the allegations in the Second Further Amended Statement of Claim dated 14 September 2020~~13 dated March 2020~~~~November 2019~~, the Respondent says the following.

Note: Terms defined in the Second Further Amended Statement of Claim have the same meaning in this defence, unless otherwise specified.

Copies of all correspondence referred to in this defence are in the possession of the solicitors for the Respondent and may be inspected by appointment.

A. PARTIES

1. In answer to paragraph 1, the Respondent:

1.1. admits that the Applicants have commenced the proceeding as a representative proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) on their own behalf and on behalf of all persons defined as Group Members in paragraph 1 of the Second Further Amended Statement of Claim;

1.2. says that the Group Members as defined includes persons:

1.2.1. who owed debts to the Respondent pursuant to s 1223(1) of the *Social Security Act 1991* (Cth) (**SSA**);

1.2.2. who received the benefit of one or more of the following social security payments: Newstart Allowance, Youth Allowance, Disability Support Pension, Austudy Allowance, Age Pension, Carer Payment, Parenting Payment, Partner Allowance, Sickness Allowance, Special Benefit, Widow A Allowance payments and Widow B Pension payments (**Income Support Payments**);

Filed on behalf of the Respondent

File ref: 19009353

Prepared by: Julian Ensbej
AGS lawyer within the meaning of s 551 of the *Judiciary Act 1903*

Address for Service:
The Australian Government Solicitor,
4 National Circuit, Barton, ACT 2600
Julian.Ensbej@ags.gov.au

Telephone: 02 6253 7229
Lawyer's Email:
Julian.Ensbej@ags.gov.au
Facsimile: 02 6253 7384
DX 5678 Canberra

- 1.2.3. in respect of whom an Asserted Overpayment Debt was calculated:
 - 1.2.3.1. on the basis of information other than information obtained from the Australian Taxation Office (**ATO**); or
 - 1.2.3.2. partly on the basis of information other than information obtained from the ATO, by using information obtained from the ATO to calculate the amount of debt owing for a particular period or periods of time, and other information not obtained from the ATO to calculate the amount of the debt owed for another period or periods of time, and then summing those amounts;
 - 1.2.4. from whom the Respondent has not received or recovered any money in payment of a debt that is alleged to be an Asserted Overpayment Debt;
 - 1.2.5. who have sought to have their Asserted Overpayment Debt reviewed under s 126 of the of the *Social Security (Administration) Act 1999* (Cth) (the **Administration Act**); or
 - 1.2.6. who have not sought to have their Asserted Overpayment Debt reviewed under s 126 of the of the Administration Act;
- ~~1.3. denies that persons who received Carer Allowance fall within the definition of the Group Members as Carer Allowance was never subject to the system described in paragraph 1(b) of the Statement of Claim;~~
- 4.4.1.3. denies that any Robodebt notification, as defined in paragraph 1(b)(i) of the Second Further Amended Statement of Claim, sent to the Applicants or Group Members asserted overpayments of one or more Income Support Payments recoverable by the Respondent as debts;

PARTICULARS

Any asserted overpayment to an Applicant or Group Member of one or more Income Support Payments was specified in a subsequent letter sent to the applicable Applicant or Group Member under s 1229 of the SSA giving notice that the Applicant or Group Member owed a debt to the Respondent.

- 4.5.1.4. says that each of the Group Members to whom paragraphs 1.2.3.1 and/or 1.3 above applies does not have:
- 4.5.1.4.1. _____ a valid claim against the Respondent in relation to a debt that is alleged to be an Asserted Overpayment Debt;
 - 4.5.2.1.4.2. _____ a claim in respect of, or that arises out of, the same, similar or related circumstances as the Applicants or other Group Members for the purpose of s 33C(1)(b) of the *Federal Court of Australia Act 1976* (Cth); and/or

~~4.5.3.1.4.3.~~ _____ a claim that gives rise to a substantial issue of law or fact that is common to the Applicants or other Group Members for the purpose of s 33C(1)(c) of the *Federal Court of Australia Act 1976* (Cth);

~~4.6.1.5.~~ otherwise denies paragraph 1.

2. The Respondent admits paragraph 2.

2A. In answer to paragraph 2A, the Respondent:

2A.1. admits that there are sub-groups of Group Members;

2A.2. says that the sub-groups of Group Members are accurately described in paragraph 41A below; and

2A.3. otherwise denies paragraph 2A.

3. The Respondent admits paragraph 3 and says further that:

3.1. Services Australia is the Executive Agency, created as a successor to the Department of Services Australia (formerly the Department of Human Services), (**Department**) that is responsible for administering Income Support Payments under the SSA; and

3.2. at all relevant times, the Department has delivered the payment of Income Support Payments under the SSA through Centrelink.

B. THE ROBODEBT SYSTEM

4. In answer to paragraph 4, the Respondent:

4.1. refers to and repeats paragraph 1.3 above; and

4.2. otherwise admits paragraph 4.

5. In answer to paragraph 5, the Respondent:

5.1. says that from about 1 July 2015, through the Department, it introduced and implemented ~~a program to identify and recover debts owed to the Respondent pursuant to s 1223(1) of the SSA, known initially as~~ the PAYG Manual Compliance Intervention program (all iterations of which are hereafter referred to generally as the **System**);

5.2. says that a small pilot program of what became the System was conducted from late April 2015 to 30 June 2015;

5.3. says that during the period from 1 July 2015 to 30 June 2016, the System ~~was not subject to automation, was controlled and performed manually by a Compliance Officer and~~ did not involve the receipt of information online from customers;

- 5.4. says that the System has changed over time since its initial implementation and that the three major iterations of it after the PAYG Manual Compliance Intervention program were known as:
- 5.4.1. 'Online Compliance Intervention' (**OCI**), which applied to assessments initiated in the period from on or around 1 July 2016 to on or around 10 February 2017;
 - 5.4.2. 'Employment Income Confirmation' (**EIC**), which applied to assessments initiated in the period from on or around 11 February 2017 to on or around 30 September 2018; and
 - 5.4.3. 'Check and Update Past Income' (**CUPI**), which applied to assessments initiated after on or around 30 September 2018;
- 5.5. says that the System was not wholly automated; and
- 5.6. otherwise denies paragraph 5.
6. In answer to paragraph 6, the Respondent:
- 6.1. says that, subject to paragraph 6.2 below, at all material times the System relevantly involved:
 - 6.1.1. the identification of persons who had received Income Support Payments ~~for all or part of in~~ a particular financial year in the past (the period over which the person had received Income Support Payments being the Review Period) and for each such person, obtaining from the ATO "Pay-As-You-Go" (**PAYG**) income data for the Review Period, being data provided to the ATO by employers as to the amount paid to a person in the relevant financial year, or part thereof;
 - 6.1.2. the determination of a notional ~~fortnightly~~ income for the person for the Review Period, calculated ~~using by apportioning~~ the total income earned by the person in the Review Period as recorded in the ATO PAYG income data as described in paragraphs 6.2.3 or 6.2.4 below ~~evenly per fortnight in the period worked~~;
 - 6.1.3. the identification of any discrepancy ~~potential overpayments of Income Support Payments~~ by comparison of the person's notional ~~fortnightly~~ income for the Review Period, determined as described in paragraph 6.1.2, with the ~~fortnightly~~ income reported to the Department by the person for the Review Period at or about the time of receiving the Income Support Payments;
 - 6.1.4. where the ~~comparison~~ discrepancy in paragraph 6.1.3 above, together with other selection rules, indicated a certain level of risk of a potential overpayment of Income Support Payments, and no exclusionary rules applied ~~because the notional income was higher than the reported income that was used at the time to determine the amount of the person's Income~~

~~Support Payment~~, the Department sent the person a letter (an **Initial Letter**) that gave notice of the fact of receipt of the ATO PAYG information, asserted that the information showed that the amount reported to the ATO was different to that which the customer told the Department, informed the customer that they needed to confirm their employment income ~~online~~ by a specified date, in the absence of which the Department would update the customer's details using the employment income information obtained from the ATO which ~~would~~ might result in a debt that the customer would have to pay, and attached details of the employment income information obtained from the ATO that set out the employer name, period of employment and amount of earnings for each employer;

- 6.1.5. if in response to the Initial Letter the customer provided income information to the Department about their earnings during the Review Period that explained the discrepancy, including information such as payslips ~~(and from on or around 11 February 2017, bank statements)~~, or if such information was otherwise located on the file maintained for the person by the Department, that information was used to determine the person's earnings during the Review Period and whether or not they had received an overpayment of Income Support Payments during that period;
- 6.1.6. if the information referred to in paragraph 6.1.5 did not cover the entire period in which the person had received Income Support Payments during the Review Period, the person's ~~notional~~ Assumed Fortnightly ~~Income~~ (as defined in 6.1.7 below) was used to determine their income during those parts of the Review Period for which other information was not available;
- 6.1.7. if in response to the Initial Letter the customer did not provide ~~payslips, bank statements (from on or around 11 February 2017) or other probative~~ information to explain the discrepancy ~~verify their earnings~~ during the Review Period, an assumption was made that the customer's previously reported income was incorrect and that the customer had earned the amounts indicated in the ATO PAYG income information in equal fortnightly amounts during the relevant period of employment that formed part of or overlapped with the Review Period (the **Assumed Fortnightly Income**), and the customer's entitlement to Income Support Payments was calculated on the basis that they had in fact earned the Assumed Fortnightly Income during that part of the Review Period in which the person had received Income Support Payments;
- 6.1.8. if the result of the processes outlined in paragraphs 6.1.5 to 6.1.7 above was that the person was entitled to a lesser amount of Income Support Payments than they had in fact received, an account payable letter was sent to the person requesting payment of the difference by a specified date, which was a notice for the purposes of s 1229(1) of the SSA; and

- 6.1.9. the availability of rights of review pursuant to Parts 4 and 4A of the Administration Act in relation to a decision that a debt was due to the Respondent;
- 6.2. says that at various times after 1 July 2015, there were differences in the System's operation, including:
- 6.2.1. after on or around 1 July 2016 and prior to the commencement of the EIC iteration of the System on 11 February 2017:
- 6.2.1.1. the process outlined in paragraph 6.1.7 above was usually automated;
- 6.2.1.2. the process outlined in paragraphs 6.1.5 and 6.1.6 above was usually undertaken by a Compliance Officer;
- 6.2.2. during the PAYG Manual Compliance Intervention iteration of the System from 1 July 2015 to 30 June 2016 and from the commencement of the EIC iteration of the System on 11 February 2017, the processes outlined in paragraphs 6.1.5 to 6.1.7 above were usually undertaken by a Compliance Officer, who was required to review the person's file, including any information provided by the person in response to the Initial Letter, and determine whether the person had received an amount of Income Support Payments to which they were not entitled, having regard to the best available information;
- 6.2.3. at all material times until 8 June 2018, the calculation of a person's notional ~~fortnightly~~ income, as described in paragraph 6.1.2 above, was determined from ATO PAYG data by calculating the total amount of income earned by the person from employment during the relevant period of employment ~~Review Period~~ and multiplying that amount by the percentage of time that the person received Income Support Payments during the Review Period;
- 6.2.4. at all material times after 8 June 2018, the calculation of a person's notional ~~fortnightly~~ income, as described in paragraph 6.1.2 above, was determined from ATO PAYG data by:
- 6.2.4.1. for each employer, calculating the number of days within the period of employment covered by the PAYG data that overlapped with the period of time that the person had received Income Support Payments;
- 6.2.4.2. for each employer, dividing the amount of the assessable income by the number of days of employment, multiplied by the number of days of overlap calculated pursuant to paragraph 6.2.4.1 above;
- 6.2.4.3. where there was more than one employer, summing the results of the calculations described at paragraph 6.2.4.2 above;

- 6.2.5. the precise terms of the Initial Letters that were sent under the different ~~PAYG Manual Compliance Intervention program and the OCI, EIC and CUPI~~ iterations of the System varied;
- 6.2.6. under the PAYG Manual Compliance Intervention program and the OCI iteration of the System, the processes described in paragraphs 6.1.5 to 6.1.8 above proceeded after an Initial Letter had been sent without regard to whether or not there was information available to the Department indicating that the Initial Letter had been delivered or accessed electronically;
- 6.2.7. under the EIC and CUPI iterations of the System, the processes described in paragraphs 6.1.5 to 6.1.8 above proceeded only if the Department had information indicating that the Initial Letter had been delivered to the person's last known address or had been accessed electronically through the person's online "MyGov" account;
- 6.2.8. under the EIC and CUPI iterations of the System, if the outcome of the process described in paragraph 6.1.7 above was a preliminary assessment by a Compliance Officer that the person has received an amount of Income Support Payment to which they were not entitled, the Compliance Officer would:
 - 6.2.8.1. make two attempts to contact the person on all available numbers to discuss the difference between the Assumed Fortnightly Income and the fortnightly income that had been reported by the person at or around the time of receiving the relevant Income Support Payments, and the person was given an opportunity to provide a satisfactory verbal explanation for the difference or to provide information such as payslips or bank statements to verify their earnings at the relevant time; and
 - 6.2.8.2. take the verbal explanation or information provided by the person into account in determining whether or not the person had a debt that was due for the purpose of s 1223(1) of the SSA;

6.3. otherwise denies the balance of paragraph 6.

C. THE FIRST APPLICANT'S ASSERTED OVERPAYMENT DEBT

- 7. The Respondent admits paragraph 7.
- 8. In answer to paragraph 8, the Respondent:
 - 8.1. admits that it sent a letter to the First Applicant dated 8 November 2016;
 - 8.2. otherwise denies paragraph 8 and will refer to the letter for its full terms and effect.

8A. In answer to paragraph 8A, the Respondent:

8A.1. repeats paragraphs 5, 6, and 8 above and paragraph 9.1 below; and

8A.2. otherwise denies paragraph 8A.

9. In answer to paragraph 9, the Respondent:

9.1. says that the letter dated 8 November 2016 was sent as part of the Online Compliance Intervention program referred to in paragraph 5.4.1 above and was an Initial Letter as referred to in paragraph 6.1.4 above;

9.2. says that it received no response to the letter from the First Applicant; and

9.3. denies paragraph 9.

10. In answer to paragraph 10, the Respondent:

10.1. says that it sent a letter to the First Applicant dated ~~29~~ November 2016 that was intended to be a notice for the purpose of s 1229 of the SSA;

10.2. says that the letter stated that the First Applicant had a debt of \$4,339.13 which included a 'debt recovery fee' of \$385.04 which is the name given to a penalty under s 1228B of the SSA;

10.3. says that the overpayment of Income Support Payments that led to the debt referred to in the letter dated 28 November 2016 was calculated by reference to ATO PAYG data as described in paragraph 6.1.7 above;

10.4. says that on 13 February 2017, a review pursuant to s 126 of the Administration Act of the decision made on or about 29 November 2016 was commenced as part of an internal review process;

10.5. says that:

10.5.1. on 10 October 2018 a decision was made to vary the amount of the debt owed by the First Applicant in respect of the period from 26 November 2012 to 8 March 2013 to \$2,905.03 (the **October 2018 Debt**);

10.5.2. the October 2018 Debt was identified having regard to, *inter alia*, payslip information held on the Respondent's electronic file for the First Applicant;

10.6. says that:

10.6.1. on 17 July 2019, the First Applicant was advised that the October 2018 Debt could be reassessed if new information was provided;

10.6.2. on 6 August 2019 the First Applicant requested a review of the October 2018 Debt by an Authorised Review Officer;

10.6.3. the First Applicant provided further information to the Respondent for the purpose of the review of the October 2018 Debt on 17 July 2019, 8 October 2019 and 15 October 2019;

10.6.4. on 4 December 2019 a decision was made to vary the amount of the October 2018 Debt to \$73.52 (the **December 2019 Debt**);

10.6.5. the December 2019 Debt was identified having regard to the payroll reports and bank information obtained from the First Applicant, and not by having regard to ATO PAYG information;

10.6.6. on 4 December 2019, a decision was made to waive the right to recover the December 2019 Debt pursuant to s 1237AAA of the SSA;

10.7. otherwise denies paragraph 10.

11. In answer to paragraph 11, the Respondent:

11.1. says that on 9 July 2019 it recovered \$142.54 by way of garnishee notice issued to the ATO;

11.2. says that on 24 October 2019, the First Applicant made a voluntary repayment of \$400.00 towards the outstanding balance of the debt;

11.3. says that on 5 December 2019, a refund of \$542.54 was issued to the First Applicant; and

11.4. otherwise denies paragraph 11.

12. In answer to paragraph 12, the Respondent:

12.1. says that by letter dated 4 December 2019, the First Applicant was notified of the outcome of the reassessment referred to at paragraph 10.6 above;

12.2. otherwise denies paragraph 12.

D. THE SECOND APPLICANT'S ASSERTED OVERPAYMENT DEBT

13. In answer to paragraph 13, the Respondent says that:

13.1. the Second Applicant was the recipient of Youth Allowance from 26 March 2006 to 23 June 2012;

13.2. the Second Applicant was the recipient of Newstart Allowance from 24 June 2012 to 9 November 2012; and

13.3. it otherwise denies paragraph 13.

14. In answer to paragraph 14, the Respondent:

14.1. says that by letter dated 31 May 2017, it:

- 14.1.1. notified the Second Applicant that it had information from the ATO that it needed the Second Applicant's help to confirm or update and that the employment dates or income details in the ATO information were different to what the Second Applicant told Centrelink when getting a payment;
- 14.1.2. provided details of the information received from the ATO in relation to the Second Applicant; and
- 14.1.3. requested the Second Applicant to check the ATO information attached to the letter and stated that the Second Applicant must confirm or update the information within 28 days of receiving the letter;

14.2. says that the 31 May 2017 letter was:

- 14.2.1. an Initial Letter as referred to in paragraph 6.1.4 above; and
- 14.2.2. generated ~~as a result of a potential overpayment of Income Support Payments having been identified,~~ as referred to in paragraph ~~6.1.3~~ 6.1.4 above;

14.3. says that on or about 16 March 2018 it sent a letter to the Second Applicant that:

- 14.3.1. was intended to be a notice for the purpose of s 1229 of the SSA;
- 14.3.2. stated that the Second Applicant had been overpaid \$3,096.26, which the Respondent was required to recover; and
- 14.3.3. stated that the amount of \$3,096.26 was due by 16 April 2018;

14.4. says that:

- 14.4.1. on 6 May 2019, the Second Applicant requested that the debt be reviewed; and
- 14.4.2. a review of the debt has not yet been completed by an Authorised Review Officer, and the review is presently suspended;

14.5. otherwise denies paragraph 14.

14A. In answer to paragraph 14A, the Respondent:

14A.1. repeats paragraphs 5, 6, and 14 above; and

14A.2. otherwise denies paragraph 14A.

15. In answer to paragraph 15, the Respondent:

- 15.1. says that the debt was calculated in the manner outlined at paragraph 6.1.7 above; and
- 15.2. otherwise denies paragraph 15.
16. In answer to paragraph 16, the Respondent:
- 16.1. refers to and repeats paragraph 14.3 above; and
- 16.2. otherwise admits paragraph 16.
17. The Respondent admits paragraph 17.
18. The Respondent admits paragraph 18 and says further that:
- 18.1. on or about 29 May 2020, it announced publicly that from July 2020 it would refund all repayments made on debts raised wholly or partially using income averaging of ATO data and any interest charges and/or recovery fees paid on related debts:

PARTICULARS

The announcement was made by media release issued by the Minister for Government Services published on the website of Services Australia, <https://minister.servicesaustralia.gov.au/media-releases/2020-05-29-changes-income-compliance-program>.

- 18.2. on or about 1 July 2020, it announced publicly that:
- 18.2.1. from 13 July 2020, it would write to people who were eligible for a refund in respect of a debt raised using averaging of ATO income information and would start making refunds in respect of such debts from 27 July 2020; and
- 18.2.2. debts raised using averaging of ATO income information, in respect of which no amount had been paid to the Commonwealth, would be reduced to zero;

PARTICULARS

The announcement was published on 1 July 2020 on the website of Services Australia, <https://www.servicesaustralia.gov.au/individuals/news/income-compliance-refunds>.

- 18.3. the debt sought to be recovered by notice issued to the Second Applicant dated 16 March 2018 was raised using averaged ATO income information and accordingly ~~will be~~ was subject to the measures announced on 29 May 2020 and 1 July 2020, as referred to in paragraphs 18.1 and 18.2 above; and

18.4. says that pursuant to the measures announced on 29 May 2020 and 1 July 2020, on 22 September 2020 the Second Applicant was repaid in full the amount recovered by the Commonwealth on 2 November 2018. ~~says that no penalty was imposed in relation to the debt; and~~

18.5. ~~otherwise admits paragraph 18.~~

E. THE THIRD APPLICANT'S ASSERTED OVERPAYMENT DEBT

19. The Respondent admits paragraph 19 and says further that the Third Applicant was the recipient of Newstart Allowance from 8 September 2007 to 16 February 2018.

20. In answer to paragraph 20, the Respondent says that:

20.1. on or about 5 May 2017, it sent an Initial Letter, as described in paragraph 6.1.4 above, to the Third Applicant which set out details of the information received from the ATO in relation to the Third Applicant;

20.2. the letter was generated ~~as a result of a potential overpayment of Income Support Payments having been identified,~~ as referred to in paragraph ~~6.1.3~~ 6.1.4 above;

20.3. on or about 13 December 2018 it sent a letter to the Third Applicant that:

20.3.1. advised that he owed a debt of \$4,351.07 relating to an overpayment of Newstart Allowance for the period 22 September 2013 to 24 June 2015 (the **13 December 2018 Debt**);

20.3.2. was intended to be a notice for the purpose of s 1229 of the SSA; and

20.3.3. was not a Robodebt notification as defined in paragraph 1(b)(i) of the Further Amended Statement of Claim;

20.4. on or about 3 October 2019 a delegate of the Secretary:

20.4.1. undertook a review pursuant to s 126 of the Administration Act of the decision made on 13 December 2018 and decided to vary the amount of the debt owed by the Third Applicant in respect of his receipt of Newstart Allowance during the period 22 September 2013 to 24 June 2015 to \$4,241.69; and

20.4.2. identified a further overpayment to the Third Applicant ~~Respondent~~ of Newstart Allowance of \$1,896.91 relating to the period 30 June 2011 to 27 June 2012;_±

(collectively, the 3 October 2018 Debt);

20.5. on or about 3 October 2019 it:

20.5.1. gave notice to the Third Applicant ~~Respondent~~ of the decisions referred to in paragraph 20.4 above; and

20.5.2. issued a notice to the Third Applicant for the purpose of s 1229 of the SSA in relation to the debt in the amount of \$1,896.91;

20.6. otherwise denies paragraph 20.

20A. In answer to paragraph 20A, the Respondent:

20A.1. repeats paragraphs 5, 6, and 20 above; and

20A.2. otherwise denies paragraph 20A.

21. In answer to paragraph 21, the Respondent:

21.1. says that the 13 December 2018 Debt was calculated with the Third Applicant's earnings for part of the relevant period determined by reference to payslips and his earnings for the balance of the relevant period determined by reference to ATO PAYG income data, as described in paragraphs 6.1.5 to 6.1.7 and 6.2.2 above;

21.2. says that the decisions made on 3 October 2019 were made by reference to payslips and payroll information and not by reference to ATO PAYG income data; and

21.3. otherwise denies paragraph 21.

22. In answer to paragraph 22, the Respondent:

22.1. refers to and repeats the matters in paragraphs 20.3 to 20.5 above;

22.2. says that:

22.2.1. further letters were sent to the Third ~~Applicant~~ Respondent in relation to the debt first identified on 13 December 2018 on 14 January 2019, 11 February 2019, 7 March 2019, 22 July 2019 and 3 October 2019; and

22.2.2. further letters were sent to the Third ~~Applicant~~ Respondent in relation to the debt identified on 3 October 2019 on 12 November 2019 and 26 November 2019;

22.3. otherwise denies paragraph 22.

23. In answer to paragraph 23, the Respondent:

23.1. ~~says that no penalty was imposed in relation to the debts identified as owed by the Third Applicant;~~

~~23.2.~~ 23.1. says that on 23 July 2019 it recovered \$4,513.01 by way of garnishee notice issued to the ATO;

~~23.3.~~23.2. _____ says that on 3 October 2019, the balance of the amount owing in relation to the 13 December 2018 Debt, as varied on 3 October 2019, was transferred to the separate debt of \$1,896.91 identified on 3 October 2019; and

~~23.4.~~23.3. _____ otherwise denies paragraph 23 .

24. In answer to paragraph 24, the Respondent:

~~24.1.~~ _____ says that no penalty was imposed in relation to the debts identified as owing by the Third Applicant on 13 December 2018 and 3 October 2019;

~~24.2.~~24.1. _____ says that as at 5 February 2020 the Third Applicant owed a debt of \$1,828.31, including interest imposed pursuant to s 1229A of the SSA and that the debt is still outstanding;

~~24.3.~~24.2. _____ admits that it has not made a decision to waive its right to recover the balance of the amount owed by the Third Applicant and that it has not informed the Third Applicant that it will not take further steps to recover the balance of the debt; and

~~24.4.~~24.3. _____ otherwise denies paragraph 24.

F. THE FOURTH APPLICANT'S ASSERTED OVERPAYMENT DEBT

25. The Respondent admits paragraph 25 and says further that the Fourth Applicant was the recipient of:

25.1. Youth Allowance from 6 May 2009 to 1 March 2015; and

25.2. Austudy from 1 June 2015 to 20 November 2015.

26. In answer to paragraph 26, the Respondent:

26.1. admits that it sent a letter to the Fourth Applicant dated 4 August 2016;

26.2. says that the 4 August 2016 letter:

26.2.1. advised that the Respondent had received information from the ATO which showed that the employment income recorded with the ATO was not the same as the amount of employment income declared for Centrelink purposes;

26.2.2. set out details of the information received from the ATO in relation to the Fourth Applicant; and

26.2.3. stated that the Fourth Applicant needed to review the income information from the ATO and call Centrelink to confirm her income details;

26.3. says that it subsequently became aware that the income amounts specified for each employer on page 2 of the letter dated 4 August 2016 were incorrect, and a

further letter was sent to the Fourth Applicant on or about 11 August 2016 that included statements as set out in paragraphs 26.2.1 and 26.2.3 and set out corrected details of the information received from the ATO in relation to the Fourth Applicant; and

26.4. otherwise denies paragraph 26.

26A. In answer to paragraph 26A, the Respondent:

26A.1. repeats paragraphs 5, 6, and 26 above and paragraph 27.1 below; and

26A.2. otherwise denies paragraph 26A.

27. In answer to paragraph 27, the Respondent:

27.1. says that the letters dated 4 August 2016 and 11 August 2016 were:

27.1.1. sent as part of the Online Compliance Intervention program as referred to in paragraph 5.4.1 above;

27.1.2. Initial Letters as referred to in paragraph 6.1.4 above;

27.1.3. generated ~~as a result of a potential overpayment of Income Support Payments having been identified,~~ as referred to in paragraph ~~6.1.3~~ 6.1.4 above; and

27.2. otherwise denies paragraph 27.

28. In answer to paragraph 28, the Respondent:

28.1. says that on or about 6 September 2016, it sent a letter to the Fourth Applicant that was intended to be a notice for the purpose of s 1229 of the SSA;

28.2. says that the 6 September 2016 letter stated that:

28.2.1. the correct amount of the Fourth Applicant's earnings had not been taken into account in the payments made for the period 2 May 2012 to 30 September 2014; and

28.2.2. the Fourth Applicant had been overpaid \$11,303.77 and that sum was due to be paid by 5 October 2016;

28.3. says that the overpayment that led to the debt identified on 6 September 2016 was calculated in part by reference to payslips, and in part by reference to ATO PAYG data as described in paragraph 6.1.6 above;

28.4. says that by letter dated 25 January 2017 the Fourth Applicant requested a review by an Authorised Review Officer of the decision made on 6 September 2016;

28.5. says that on or about 17 May 2017 the Fourth Applicant spoke to a Compliance Officer and withdrew her request for a review by the Authorised Review Officer pending her provision of bank statements to support the review;

28.6. says that the Fourth Applicant provided statements of her bank accounts to the Respondent on or about 6 September 2017;

28.7. says that on 12 December 2019 it undertook a review pursuant to s 126 of the Administration Act of the decision on 6 September, resulting in a decision to vary the amount of the debt owed by the Fourth Applicant to \$12,720.72 relating to the overpayment of Youth Allowance during the period 4 April 2012 to 30 September 2014;

28.8. says that the conclusion on 12 December 2019 that the Fourth Applicant had been overpaid Youth Allowance in the amount of \$12,720.72 was based on consideration of payslips and bank statements, and did not involve the determination of fortnightly employment income by apportionment of ATO PAYG income information; and

28.9. denies paragraph 28.

29. In answer to paragraph 29, the Respondent:

29.1. says that between 12 October 2016 and 4 January 2017, the Respondent made fortnightly deductions from the Fourth Applicant's entitlement to Family Tax Benefit pursuant to s 1231(1) of the SSA which were credited towards repayment of the debt identified on 6 September 2016;

29.2. says that from 14 March 2017 to the present date, the Fourth Applicant has been making regular payments of \$20 per fortnight in relation to the debt;

29.3. says that as at 5 February 2020, the balance of the debt identified on 12 December 2019 as owed by the Fourth Applicant was \$11,185.61; and

29.4. otherwise denies paragraph 29.

30. ~~In answer to paragraph 30, the Respondent~~ denies paragraph 30.;

~~30.1. says that no penalty was imposed in relation to the debts identified as owed by the Fourth Applicant; and~~

~~30.2. otherwise denies paragraph 30.~~

G. THE FIFTH APPLICANT'S ASSERTED OVERPAYMENT DEBT

31. The Respondent admits paragraph 31 and says further that the Fifth Applicant was the recipient of Newstart Allowance from 24 April 2014 to 24 September 2014.

32. In answer to paragraph 32, the Respondent:

32.1. says that on or about 30 October 2016, it sent a letter to the Fifth Applicant that:

- 32.1.1. advised that it had received information from the ATO which showed that the amount of employment income reported to them was different from the amount that the Fifth Applicant told Centrelink;
- 32.1.2. set out details of the information received from the ATO in relation to the Fifth Applicant; and
- 32.1.3. stated that the Fifth Applicant needed to check the employment income information, and confirm her employment income online before 18 November 2016; and

32.2. otherwise denies paragraph 33.

32A. In answer to paragraph 32A, the Respondent:

32A.1. repeats paragraphs 5, 6, and 32 above and paragraph 33.1 below; and

32A.2. otherwise denies paragraph 32A.

33. In answer to paragraph 33, the Respondent:

33.1. says that the letter dated 30 October 2016 was:

- 33.1.1. sent as part of the Online Compliance Intervention program described in paragraph 5.4.1 above;
- 33.1.2. an Initial Letter as referred to in paragraph 6.1.4 above;
- 33.1.3. generated ~~as a result of a potential overpayment of Income Support Payments having been identified,~~ as referred to in paragraph ~~6.1.3~~ 6.1.4 above; and

33.2. otherwise denies paragraph 33.

34. In answer to paragraph 34, the Respondent:

34.1. says that on or about 18 November 2016 it sent a letter to the Fifth Applicant that was intended to be a notice for the purpose of s 1229 of the SSA;

34.2. says that the 18 November 2016 letter advised the Fifth Applicant that she owed a debt of \$2,602.65 in respect of her receipt of Newstart Allowance during the period 24 April 2014 to 18 June 2014, which was due to be paid by 16 December 2016;

34.3. says that the overpayment of Newstart Allowance that was identified on 18 November 2016 was calculated in the manner described in paragraph 6.1.7 above;

34.4. says that on or about 16 May 2019 it undertook a review pursuant to s 126 of the Administration Act of the decision made on 18 November 2016 and subsequently

affirmed the decision to raise a debt of \$2,366.05, but set aside the decision to apply a debt recovery fee of \$236.60;

34.5. says that in calculating the Fifth Applicant's entitlement to Newstart Allowance for the purpose of the review decision made on 16 May 2019, the Authorised Review Officer relied on ATO PAYG income information as described in paragraph 6.1.7 above;

34.6. says that on 31 August 2019, the Fifth Applicant provided further information to the Respondent in the form of payslips;

34.7. says that on or about 17 December 2019 the Respondent undertook a review of the debt and determined that the Fifth Applicant had received Newstart Allowance during the period 24 April 2014 to 18 June 2014 to which she was not entitled, and therefore owed a debt, in the amount of \$253.85;

34.8. says that the decision made on 17 December 2019 that the Fifth Applicant had been overpaid Newstart Allowance in the amount of \$253.85 was based on consideration of payslips provided by the Fifth Applicant, and did not involve the determination of fortnightly employment income by apportionment of ATO PAYG income information; and

34.9. otherwise denies paragraph 34.

35. In answer to paragraph 35, the Respondent:

35.1. says that on 4 December 2018, it recovered \$1,162.95 by way of garnishee notice issued to the ATO;

35.2. says that an amount of \$903.37 was refunded to the Fifth Applicant on 30 December 2019, being the balance of the amount obtained by way of garnishee notice issued to the ATO less the amount of \$253.85 determined to be a debt on 17 December 2019 and less a general interest charge of \$5.73; and

35.3. otherwise denies paragraph 35.

36. In answer to paragraph 36, the Respondent:

36.1. says that on 17 December 2019, the Fifth Applicant was sent a letter advising of the outcome of the review referred to at paragraph 34.7 above; and

36.2. otherwise denies paragraph 36.

GA. THE SIXTH APPLICANT'S ASSERTED OVERPAYMENT DEBT

36A. The Respondent admits paragraph 36A:

36B. In answer to paragraph 36B, the Respondent:

36B.1. says that on or about 7 February 2018, it sent a letter to the Sixth Applicant:

36B.1.1. advising that it had received information from the ATO which showed that the amount of employment income reported to them was different from the amount that the Sixth Applicant told Centrelink;

36B.1.2. setting out details of the information received from the ATO in relation to the Sixth Applicant; and

36B.1.3. stating that the Sixth Applicant needed to check the employment income information, and confirm his employment income online within 28 days of receiving the letter otherwise his Centrelink record may be updated based on the information received from the ATO; and

36B.2. says that on or about 27 February 2018, it sent a letter to the Sixth Applicant that was a reminder letter advising the Sixth Applicant to confirm or update his employment income details by 12 March 2018 otherwise his Centrelink record may be updated based on the income information received from the ATO;

36B.3. says that on or about 12 March 2018, a letter was sent to the Sixth Applicant advising him that the due date for him to confirm or update his employment income details was extended to 26 March 2018;

36B.4. says that on or about 17 July 2018, a Compliance Officer attempted to contact the Sixth Applicant to discuss his employment income details but was unable to make contact with him;

36B.5. says that on or about 18 July 2018:

36B.5.1. a Compliance Officer attempted to contact the Sixth Applicant to discuss his employment income details but was unable to make contact with him;

36B.5.1. it was identified that the Sixth Applicant had received an overpayment of Youth Allowance;

36B.5.2. an account payable letter was issued to the Sixth Applicant advising:

36B.5.2.1. that the correct amount of the Sixth Applicant's earnings was not taken into account in the payments made to him from 20 February 2012 to 30 May 2014; and

36B.5.2.1. that the Sixth Applicant had to repay the amount of \$4,815.68;

36B.6. says that on or about 19 July 2018 a letter was issued to the Sixth Applicant advising:

36B.6.1. that as no further income information had been provided by the Sixth Applicant, the information from the ATO had been applied to the Sixth Applicant's Centrelink record; and

36B.6.2. that he owed a debt of \$4,815.68, including a recovery fee of \$403.95, for the period 20 February 2012 to 30 May 2014;

36B.7. says that on or about 8 August 2018, the Sixth Applicant contacted Services Australia via telephone and requested:

36B.7.1. a copy of the overpayment calculations;

36B.7.2. a pause on the recovery of the overpayment; and

36B.7.3. a copy of the telephone conversation; and

36B.8. says that on or about 19 December 2019, recovery of the overpayment was paused;

36B.9. says that as of 17 July 2020, the Sixth Applicant has not requested a reassessment or review of the overpayment calculation; and

36B.10. otherwise denies paragraph 36B.

36C. In answer to paragraph 36C, the Respondent:

36C.1. repeats paragraphs 5, 6, and 36B above and paragraph 36D below; and

36C.2. otherwise denies paragraph 36C.

36D. In answer to paragraph 36D, the Respondent:

36D.1. says that the letter dated 19 July 2018 was:

36D.1.1. sent as part of the Employment Income Confirmation program described in paragraph 5.4.2 above;

36D.1.2. an Initial Letter as referred to in paragraph 6.1.4 above;

36D.1.3. generated ~~as a result of a potential overpayment of Income Support Payments having been identified,~~ as referred to in paragraph ~~6.1.3~~ 6.1.4 above; and

36D.2. otherwise denies paragraph 36D.

36E. In answer to paragraph 36E, the Respondent:

36E.1. says that on or about 19 July 2018 it sent the letter referred to in paragraph 36B.6. above to the Sixth Applicant that was intended to be a notice for the purpose of s 1229 of the SSA;

36E.2. says that the 19 July 2018 letter advised the Sixth Applicant that he owed a debt of \$4,815.68 in respect of his receipt of Youth Allowance during the period

20 February 2012 to 30 May 2014, which was due to be paid by 16 August 2018;

36.E.3. says that the overpayment of Youth Allowance that was identified on 19 July 2018 was calculated in the manner described in paragraph 6.1.7 above; and

36.E.4. otherwise denies paragraph 36E.

36F. In answer to paragraph 36F, the Respondent:

36F.1. says that no penalty was imposed in relation to the debt identified as owing by the Sixth Applicant on 18 July 2018;

36F.2. admits that the amount of \$4,815.68, including a recovery fee of \$403.95, has not been paid by or on behalf of the Sixth Applicant, and has not been received from him;

36F.3. subject to paragraph 36F.4, admits that it has not informed the Sixth Applicant that it will not take further steps to recover the amount of \$4,815.68, including a recovery fee of \$403.95;

36F.4. says that the debt identified on 18 July 2018 as owing by the Sixth Applicant was raised using averaged ATO income information and accordingly will be subject to the measures announced on 29 May 2020 and 1 July 2020, as referred to in paragraphs 18.1 and 18.2 above; and

36F.5. otherwise denies paragraph 36F.

H. GROUP MEMBERS' ASSERTED OVERPAYMENT DEBTS

37. The Respondent admits paragraph 37.

38. In answer to paragraph 38, the Respondent:

38.1. denies that in sending any Robodebt notification, as defined in paragraph 1(b)(i) of the Second Further Amended Statement of Claim, it asserted that there had been an overpayment of Income Support Payments and repeats paragraphs 00 and 6.1.4 to 6.1.8 above;

38.2. says that by issuing a notice under s 1229 of the SSA it asserted that a debt due to the Respondent had not been wholly paid;

38.3. says that recipients of s 1229 notices had the right to seek a review of the decision of an officer that a debt was due to the Respondent and had not been wholly paid pursuant to Parts 4 and 4A of the Administration Act;

38.4. says that many Group Members sought such reviews; and

38.5. otherwise denies paragraph 38.

38A. In answer to paragraph 38A, the Respondent:

38A.1. repeats paragraphs 5, 6, and 38 above and paragraph 39 below; and

38A.2. otherwise denies paragraph 38A.

39. In answer to paragraph 39, the Respondent:

39.1. repeats paragraphs 1.3 and 6 above;

39.2. says that a significant number of Group Members sought a review of the decision of an officer that they owed a debt to the Respondent that had not been wholly paid, pursuant to Parts 4 and 4A of the Administration Act;

39.3. says that a significant number of debts raised against Group Members by the issuing of a notice under s 1229 of the SSA were based on information and data other than or in addition to ATO PAYG data;

39.4. says that the Applicants and the Group Members who received the benefit of an Income Support Payment to which they were not entitled owed a debt that was due to the Respondent from the time that they received the benefit of the payment pursuant to s 1223(1) of the SSA regardless of whether a notice had been issued under s 1229 of the SSA; ~~and~~

39.5. says that to the extent debts raised against Group Members by the issuing of a notice under s 1229 of the SSA were based on information and data other than or in addition to ATO PAYG data, that information and data may have been provided to the Respondent prior to an Initial Letter being issued and located on the file in accordance with the process described in paragraph 6.1.5 above, or provided in response to an Initial Letter; and;

39.6 otherwise denies paragraph 39.

40. The Respondent admits paragraph 40 and says further that:

40.1. demands for payment were made by way of notices issued pursuant to s 1229 of the SSA where a debt had been identified as being due to the Respondent and not having been wholly paid; and

40.2. on some occasions, a s 1229 notice included an amount by way of penalty pursuant to s 1228B of the SSA.

41. In answer to paragraph 41, the Respondent:

41.1. repeats paragraph 1.2.4 above;

41.2. admits sub-paragraph 41(b); and

41.3. otherwise denies the balance of paragraph 41.

41A. In answer to paragraph 41A, the Respondent:

41A.1. repeats paragraph 1.3 above:

41A.2. says that each Applicant and Group Member fall into one or more of the following sub-groups (with some Group Members having multiple debts that are alleged to be Asserted Overpayment Debts and falling into more than one sub-group):

41A.2.1. Group Members and the Sixth Applicant each of whom have (or had) a debt that is alleged to be an Asserted Overpayment Debt that was determined wholly or partially on apportioned ATO PAYG income information, but from whom the Commonwealth has not received or recovered any funds (Category 1 Group Members):

41A.2.2. Group Members and the Second Applicant each of whom have (or had) a debt that is alleged to be an Asserted Overpayment Debt, part or all of which has been received or recovered by the Commonwealth, and which was determined:

41A.2.2.1 wholly on apportioned ATO PAYG income information (Category 2A Group Members); or

41A.2.2.2 partially on apportioned ATO PAYG income information (Category 2B Group Members):

41A.2.3. Group Members and the First Applicant, Third Applicant (in respect of his 13 December 2018 Debt), the Fourth Applicant and the Fifth Applicant each of whom have (or had) a debt that is alleged to be an Asserted Overpayment Debt, part or all of which has been received or recovered by the Commonwealth, that was initially determined wholly on apportioned ATO PAYG income information, but which was later recalculated by the Commonwealth in the context of a subsequent review under s 126 of the Administration Act:

41A.2.3.1 based on information provided by or on behalf of the Group Member (such as payslips and/or bank statements); and

41A.2.3.2. not based on apportioned ATO PAYG income information.

(Category 3 Group Members):

41A.2.4. Group Members and the Third Applicant (in respect of his 3 October 2018 Debt) each of whom have (or had) a debt that is alleged to be an Asserted Overpayment Debt, all, part or none of which has been received or recovered by the Commonwealth, that was wholly determined based on information provided by or on behalf of the Group Member (such as payslips and/or bank statements) and not on ATO PAYG income information (Category 4 Group Members).

41A.3. otherwise denies the balance of paragraph 41A.

I. ASSERTED OVERPAYMENT DEBTS ARE NOT DEBTS

42. The Respondent admits paragraph 42.

43. The Respondent admits paragraph 43.

44. ~~In answer to paragraph 44, t~~The Respondent admits paragraph 44.;

44.1. ~~says that the allegation is embarrassing insofar as it is unclear what “arising during the relevant period” means; and~~

44.2. ~~otherwise admits paragraph 44.~~

45. In answer to paragraph 45, the Respondent:

45.1. repeats paragraphs 6, 9, 10, 15, 21, 27, 28, 33, 34 and 39 above; and

45.2. denies paragraph 45.

46. In answer to paragraph 46, the Respondent:

46.1. says that, as a matter of law, a debt under s 1223(1) of the SSA is due and arises by operation of that provision;

46.2. says that the Applicants and the Group Members who received the benefit of an Income Support Payment to which they were not entitled owed a debt that was due to the Respondent from the time that they received the benefit of the payment;

46.3. admits that the existence of a debt in a particular amount could not be validly established for the purpose of s 1223(1) of the SSA where the decision that the person owed a debt in that amount depended, wholly or in part, on: only information available to support a conclusion that a person had received the benefit of an Income Support Payment to which they were not entitled was:

46.3.1. ATO PAYG income information and the Assumed Fortnightly Income; or

46.3.2. notional fortnightly income and the fortnightly income assumption,

without other information capable of supporting a conclusion that the recipient received a consistent fortnightly income over the relevant period;

46.4. in answer to sub-paragraph 46(a):

46.4.1. admits that, in respect of each of the Applicants, their notional fortnightly income (if there was one) or Assumed Fortnightly Income was not the same as their actual fortnightly income, and was not necessarily referable to or indicative of their actual income in any fortnight;

46.4.2. says that the notional fortnightly income (if there was one) or Assumed Fortnightly Income of each of the Group Members was not necessarily the same as their actual fortnightly income and was not necessarily referable to or indicative of actual income in any fortnight; and

46.4.3. otherwise denies sub-paragraph 46(a);

46.5. in answer to sub-paragraph 46(b):

46.5.1. admits that where the notional fortnightly income (if there was one) was not the same as the actual fortnightly income, and was not referable to or indicative of actual income in any fortnight, that the fortnightly income assumption was false; and

46.5.2. otherwise denies the balance of sub-paragraph 46(b);

46.6. in answer to sub-paragraphs 46(c) and 46(d):

46.6.1. admits that under the SSA the amount of Income Support Payments ~~(which does not include Carer Allowance)~~ to which a person is entitled is determined by reference to, amongst other things, the amount of income that they earned in the relevant fortnight;

46.6.2. admits, in relation to a number of individuals, that the notional fortnightly income (if there was one) or Assumed Fortnightly Income was not the same as the actual fortnightly income, and was not referable to or indicative of actual income in any fortnight; and

46.6.3. otherwise denies the balance of sub-paragraphs 46(c) and 46(d);

46.7. otherwise denies the balance of paragraph 46.

47. The Respondent admits paragraph 47.

48. The Respondent admits paragraph 48.

48A. In answer to paragraph 48A, the Respondent:

48A.1. repeats paragraphs 1.3, 5 and 46 above;

48A.2. subject to paragraph 49.3.2 below, admits that it was not a valid decision to issue a notice pursuant to s 1229 SSA where the decision depended, in whole or in part, on the Assumed Fortnightly Income or notional fortnightly income and the fortnightly income assumption without other information capable of supporting a conclusion that the recipient received a consistent fortnightly income over the relevant period;

48A.3 says that by sending an Initial Letter, it requested but did not compel Group Members to provide income information to the Commonwealth;

48A.4 says that no statutory power was or is required to request the provision of information to the Commonwealth on a voluntary basis;

48A.5 says that it does not require statutory authority to rely on ATO PAYG income information for the purpose of selecting recipients of Income Support Payments who will receive correspondence, including an Initial Letter; and

48A.6. otherwise denies paragraph 48A.

49. In answer to paragraph 49, the Respondent:

49.1aa. says in answer to sub-paragraph 49(aa) that it refers to and repeats the matters set out in paragraphs 46 and 48A above:

49.1. says in answer to sub-paragraph 49(a):

49.1.1. that it refers to and repeats the matters set out in paragraph 46 above;

49.1.2. that:

49.1.2.1. the December 2019 Debt identified as owed by the First Applicant (and subsequently waived);

49.1.2.2. the debts identified on 3 October 2019 as owed by the Third Applicant;

49.1.2.3. the debt identified on review on 12 December 2019 as owed by the Fourth Applicant;

49.1.2.4. the debt identified on review on 17 December 2019 as owed by the Fifth Applicant; and

49.1.2.5. the debts identified as owed by some of the Group Members who were sent a Robodebt notification (as that term is defined in paragraph 1(b)(i) of the Further Amended Statement of Claim),

were based on income earned by the relevant person, as recorded in payslips, payroll records and/or bank statements, and were not based on apportioned ATO PAYG income information or notional fortnightly income or Assumed Fortnightly Income and the fortnightly income assumption; and

49.2. says in answer to paragraph 49(b) that it refers to and repeats its admission in paragraph 46.3; and

49.3. says in answer to paragraph 49(c) that it:

49.3.1. refers to and repeats the matters set out in paragraphs 46 and 48A above:

49.3.2. says that a decision to demand payment of an alleged debt (including by exercise of the power conferred by s 1229(1) of the SSA to issue a notice), where the decision depended, in whole or in part, on the Assumed Fortnightly Income or notional fortnightly income and the fortnightly income assumption without other information capable of supporting a conclusion that the recipient received a consistent fortnightly income over the relevant period was nonetheless valid to the extent that the decision was capable of being the subject of a review by the Secretary pursuant to s 126 of the Administration Act;

49.3.3. says that a decision by the Secretary pursuant to s 126 of the Administration Act has effect unless subsequently set aside or varied in accordance with law or otherwise declared to be invalid; and

49.4 otherwise denies paragraph 49.

J. UNJUST ENRICHMENT

50. In answer to paragraph 50, the Respondent:

50.1. in relation to the First Applicant:

50.1.1. admits that it was enriched by and in the amount of the \$142.54 recovered on 9 July 2019 by way of garnishee notice issued to the ATO pleaded at paragraph 11.1 above;

50.1.2. admits that it was enriched by and in the amount of the \$400.00 repayment made by the First Applicant on 24 October 2019 pleaded at paragraph 11.2 above;

50.1.3. says that on 5 December 2019 it waived the First Applicant's outstanding debt of \$73.52 pursuant to s 1237AA of the SSA and refunded \$542.54 to the First Applicant; and

50.1.4. says that it is no longer enriched at the expense of the First Applicant by the amounts pleaded in paragraphs 50.1.1 and 50.1.2 above;

50.2. in relation to the Second Applicant:

50.2.1. admits that it was enriched by and in the amount of the \$803.96 recovered by way of garnishing the Second Applicant's 2017/2018 financial year tax return refund as admitted in paragraph 17 above;

50.3. in relation to the Third Applicant:

50.3.1. admits that it was enriched by and in the amount of \$4,513.01 that was recovered on 23 July 2019 by way of garnishee notice issued to the ATO as pleaded at paragraph 23.2 above;

50.4. in relation to the Fourth Applicant:

50.4.1. admits that it was enriched by and in the amount recovered from the Fourth Applicant as pleaded at paragraphs 29.1 and 29.2 above, that as at 5 February 2020 totalled \$1,535.11;

50.5. in relation to the Fifth Applicant:

50.5.1. admits that it was enriched by and in the amount of the \$1,162.95 recovered by way of garnishee notice issued to the ATO as pleaded at paragraph 35.1 above;

50.5.2. repeats paragraph 34.8 above;

50.5.3. says that an amount of \$903.37 was refunded to the Fifth Applicant on 30 December 2019; and

50.5.4. says that it is no longer enriched at the expense of the Fifth Applicant by the amount pleaded in paragraph 50.5.3 above;

50.5A.1. in relation to the Sixth Applicant:

50.5A.1.1. denies that it was enriched as it did not receive or recover any funds from the Sixth Applicant (whether by way of garnishee notice issued to the ATO or otherwise):

50.6. says further or in the alternative with respect to each Group Member that it:

50.6.1. admits that it was enriched where it received or recovered funds (whether by way of garnishee notice issued to the ATO or otherwise) from a Group Member;

50.6.2. says that where funds it has received or recovered from a Group Member have been refunded to that Group Member, it is no longer enriched by the amount that has been refunded; and

50.6.3. denies that it was enriched where it did not receive or recover funds (whether by way of garnishee notice issued to the ATO or otherwise) from a Group Member;

50.7. otherwise denies paragraph 50.

51. In answer to paragraph 51, the Respondent:

51.1. in relation to the First Applicant:

51.1.1. admits that the amounts for which it was enriched, as pleaded in paragraphs 50.1.1 and 50.1.2 above, were at the direct or indirect expense of the First Applicant;

51.1.2. repeats paragraphs 50.1.3 and 50.1.4 above; and

51.1.3. says that the amounts for which it was enriched, as pleaded in paragraphs 50.1.1 and 50.1.2 above, have been repaid to the First Applicant;

51.2. in relation to the Second Applicant:

51.2.1. admits that the amount for which it was enriched as pleaded in paragraph 50.2.1 above was at the direct or indirect expense of the Second Applicant;

51.3. in relation to the Third Applicant:

51.3.1. admits that the amount for which it was enriched as pleaded in paragraph 50.3.1 above was at the direct or indirect expense of the Third Applicant;

51.4. in relation to the Fourth Applicant:

51.4.1. admits that the amount for which it was enriched as pleaded in paragraph 50.4.1 above was at the direct or indirect expense of the Fourth Applicant;

51.5. in relation to the Fifth Applicant:

51.5.1. admits that the amount it was enriched as pleaded in paragraph 50.5.1 above was at the direct or indirect expense of the Fifth Applicant;

51.5.2. repeats paragraphs 50.5 above; and

51.5.3. says that it is no longer enriched at the expense of the Fifth Applicant by the amount pleaded in paragraph 50.5.3 above;

51.5A. in relation to the Sixth Applicant:

51.5A.1. denies that it was enriched at the direct or indirect expense of the Sixth Applicant as it did not receive or recover any funds (whether by way of garnishee notice issued to the ATO or otherwise) from the Sixth Applicant;

51.6. says further or in the alternative with respect to each Group Member:

51.6.1. repeats paragraph 50.6 above;

51.6.2. admits that where it was enriched by the receipt or recovery of funds from a Group Member (whether by way of garnishee notice issued to the ATO or otherwise), that such enrichment was at the direct or indirect expense of that Group Member;

51.6.3. says that where it was enriched by the receipt or recovery of funds from a Group Member and those funds have been partially or wholly refunded to that Group Member, it is no longer enriched at the expense of that Group Member by the amount that has been refunded; and

51.6.4. denies that it was enriched at the direct or indirect expense of a Group Member where it did not receive or recover any funds (whether by way of garnishee notice issued to the ATO or otherwise) from that Group Member;

51.7. otherwise denies the balance of paragraph 51.

52. In answer to paragraph 52, the Respondent:

52.1. repeats paragraphs 46, 48A and 49 above;

52.2. admits that it was not a valid decision to issue a notice pursuant to s 1229 SSA or exercise a power of recovery provided for by s 1230C of the SSA where the decision depended, in whole or in part, on the Assumed Fortnightly Income or notional fortnightly income and the fortnightly income assumption without other information capable of supporting a conclusion that the recipient received a consistent fortnightly income over the relevant period;

52.3. otherwise denies paragraph 52.

53. In answer to paragraph 53, the Respondent:

53.1. repeats paragraphs 46 and 50 to 52 above;

53.2. says in relation to the First Applicant:

53.2.1. until 4 December 2019, there was a juristic reason for the Respondent to retain part of the enrichment, being that the payment of part of the enrichment was in satisfaction of a right;

PARTICULARS

- (i) Until it was waived on 4 December 2019, the First Applicant owed a debt of \$73.52 to the Respondent pursuant to section 1223(1) of the SSA.
- (ii) Payment of part of the enrichment, to the amount of \$73.52, was received in satisfaction of that debt but was subsequently refunded following the decision to waive recovery of the \$73.52 amount.

53.3. says in relation to the Third Applicant:

53.3.1. that there was a juristic reason for the Respondent to retain all or part of the enrichment, being that the payment of all or part of the enrichment was in satisfaction of a right;

PARTICULARS

- (i) Pursuant to section 1223(1) of the SSA the Third Applicant owed a due debt of \$6,138.60 to the Respondent.

- (ii) The enrichment was received in part satisfaction of that debt that has accordingly been partially discharged by the Respondent.

53.4. says in relation to the Fourth Applicant:

- 53.4.1. that there was a juristic reason for the Respondent to retain all of the enrichment, being that the payment of all of the enrichment was in satisfaction of a right;

PARTICULARS

- (i) Pursuant to section 1223(1) of the SSA the Fourth Applicant owed a due debt of \$12,720.72 to the Respondent.
- (ii) The enrichment was received in part satisfaction of that debt that has accordingly been discharged in part by the Respondent.

53.5. in relation to the Fifth Applicant:

- 53.5.1. that there was a juristic reason for the Respondent to retain all or part of the enrichment, being that the payment of all or part of the enrichment was in satisfaction of a right;

PARTICULARS

- (i) Pursuant to section 1223(1) of the SSA the Fifth Applicant owed a debt of \$259.58 to the Respondent.
- (ii) Payment of part of the enrichment, to the amount of \$259.58, was received in satisfaction of that debt that has accordingly been discharged by the Respondent.

53.6. says further or in the alternative with respect to each Group Member that:

- 53.6.1. it repeats paragraphs 50.6 and 51.6 above;

53.6.2. says that where:

- 53.6.2.1. it recovered an amount from a Group Member (whether directly or indirectly) in relation to a debt that was identified in the circumstances set out in paragraph 46.3 above; and

- 53.6.2.2. a debt in fact arose pursuant to s 1223(1) of the SSA prior to the date of recovery from the Group Member which has not been wholly discharged,

the Respondent denies that it has been unjustly enriched to the extent of the amount in fact owed by the Group Member at the time of recovery because there is a juristic reason for the Respondent to retain the amount in fact owed; and

53.7. otherwise denies the balance of paragraph 53.

54. In answer to paragraph 54, the Respondent:

54.1. says that insofar as the Respondent has recovered monies from the Applicants and/or Group Members by way of garnishee notice issued to the ATO or a third party, the amount was not paid on behalf of the Applicant or Group Member under or by reason of any valid debt beliefs held by the Applicant or Group Member; and

54.2. otherwise says that it does not know the state of mind of each Applicant or Group Member and therefore it does not admit paragraph 54.

55. In answer to paragraph 55, the Respondent:

55.1. repeats paragraphs 46 and 54 above; and

55.2. otherwise does not admit paragraph 55.

56. In answer to paragraph 56, the Respondent:

56.1. repeats paragraphs 46, 54 and 55 above;

56.2. repeats, further or in the alternative, paragraphs 53.2 to (ii) above; and

56.3. otherwise denies paragraph 56.

57. In answer to paragraph 57, the Respondent:

57.1. repeats paragraph 46 above;

57.2. says that where an amount was paid by an Applicant or Group Member to the Respondent, the Respondent does not know, and does not admit, the basis upon which the Applicant or Group Member paid the amount;

57.3. says that where an amount was recovered from an Applicant or Group Member by way of a garnishee notice issued to a third party, the amount was paid by the person to whom the notice was addressed on the basis that they were legally obliged to comply with the notice, to the extent that they were capable of doing so; and

PARTICULARS

Sub-sections 1233(3), (3A) and (3B) of the SSA.

57.4. otherwise denies paragraph 57.

58. In answer to paragraph 58, the Respondent:

58.1. repeats paragraphs 46, 53 and 57 above;

58.2. says that by reason of the matters pleaded in paragraphs 53.2, 53.3, 53.4 and 53.5 above, the basis for the payment to, or recovery by, the Respondent of an amount equal to or less than the amount that was in fact owed by the First Applicant, Third Applicant, Fourth Applicant and Fifth Applicant (respectively) did not fail because the amount was in fact due and owing pursuant to s 1223(1) of the SSA;

58.3. says further or in the alternative with respect to each Group Member that where:

58.3.1. the Respondent recovered an amount from a Group Member (whether directly or indirectly) in relation to a debt that was identified in the circumstances set out in paragraph 46.3 above; and

58.3.2. a debt in fact arose pursuant to s 1223(1) of the SSA prior to the date of recovery from the Group Member which has not been wholly discharged,

the basis for the payment to, or recovery by, the Respondent of an amount equal to or less than the amount that was in fact owed did not fail because the amount was in fact due and owing pursuant to s 1223(1) of the SSA; and

58.4. otherwise denies paragraph 58.

59. In answer to paragraph 59, the Respondent:

59.1. repeats paragraphs 46, 53, 57 and 58 above; and

59.2. otherwise denies paragraph 59.

60. In answer to paragraph 60, the Respondent:

60.1. says it never withheld or threatened to withhold the performance of any public duty or discretion that it was required to perform under the SSA or any other law in the event that a debt said to be owed pursuant to s 1223 of the SSA was not repaid;

60.2. says that the methods prescribed by the SSA (including ss 1229 and 1230C) that were adopted by the Respondent for the recovery of debts understood to be owed and due pursuant to s 1223 of the SSA do not amount to duress;

60.3. says that certain Group Members, together with the First and Fourth Applicants, have made voluntary payments in response to notices issued under s 1229 of the SSA; and

60.4. otherwise denies paragraph 60.

61. In answer to paragraph 61, the Respondent:

61.1. repeats paragraphs 46, 53 and 60 above; and

61.2. otherwise denies paragraph 61.

62. The Respondent denies paragraph 62.

62A The Respondent denies paragraph 62A.

K. MONIES HAD AND RECEIVED

63. In answer to paragraph 63, the Respondent:

63.1. repeats paragraphs 46, 53, 54, 57 and 58 above; and

63.2. otherwise denies paragraph 63.

64. The Respondent denies paragraph 64.

65. In answer to paragraph 65, the Respondent:

65.1. admits that where:

65.1.1. a decision that a debt in a particular amount was owed by a Group Member was made and that decision depended, in whole or in part, on the Assumed Fortnightly Income or notional fortnightly income and the fortnightly income assumption without other information capable of supporting a conclusion that the recipient received a consistent fortnightly income over the relevant period; and

65.1.2. the decision to issue a notice to the Group Member pursuant to s 1229 of the SSA in relation to the debt has been reviewed pursuant to s 126 of the Administration Act and the debt has been recalculated to zero and the notice set aside;

the Group Member is entitled to the return of an amount paid in respect of that debt;

65.2. refers to and repeats paragraphs 18.1 and 18.2 above and says that the Commonwealth is currently undertaking a process to identify and review all debts of the kind described in paragraph 65.1.1 above and to refund amounts paid in respect of those debts; and

65.3. otherwise denies paragraph 65.

L. NEGLIGENCE

66. In answer to paragraph 66, the Respondent:

66.1. repeats paragraph ~~63~~ above;

66.2. denies that it has exclusive statutory power in respect of the matters outlined in sub-paragraphs 66(a) to 66(f);

66.3. admits, subject to paragraph 66.2 above, sub-paragraphs 66(a) to 66(f); and

66.4. otherwise denies paragraph 66.

67. In answer to paragraph 67, the Respondent:
- 67.1. says that it has contractual arrangements with various debt collection agencies pursuant to which those agencies perform functions as set out in sub-paragraph 67(d) on its behalf; and
 - 67.2. otherwise admits paragraph 67.
68. In answer to paragraph 68, the Respondent:
- 68.1. repeats paragraphs 66 and 67 above; and
 - 68.2. otherwise admits paragraph 68.
69. In answer to paragraph 69, the Respondent:
- 69.1. says that subject to reference to the relevant provisions of the SSA, it admits sub-paragraph 69(c);
 - 69.2. says that it does not know, and does not admit, that the Applicants and Group Members held the valid debt beliefs and/or assumed the correctness of the debt recovery basis as alleged in sub-paragraph 69(d);
 - 69.3. says that a number of the Applicants and Group Members have successfully exercised their rights of review pursuant to Parts 4 and 4A of the Administration Act in relation to the debts identified as owing by them;
 - 69.4. ~~says that in answer to sub-paragraph 69(f) is embarrassing and should be struck out insofar as sub-paragraph 69(f)(i) is directed to whether the Applicants and Group Members were unlikely to have retained or have access to the relevant records, which is not relevant to the question whether or not they had the alleged impaired capacity; that to the extent that any of the Applicants and Group Members had access to statements for their bank accounts (whether hard copy or electronic), such statements would have provided information relevant to determining the correctness of the fortnightly income assumption and the Social Security Payment differential (as those expressions are defined in the [Second Further Amended Statement of Claim](#));~~
 - 69.5. says that until early 2017, it published a statement on the Centrelink website to the effect that recipients of Income Support Payments should retain their payslips for at least 6 months; and
 - 69.6. otherwise denies paragraph 69.
70. In answer to paragraph 70, the Respondent:
- 70.1. refers to and repeats paragraph 69 above;
 - 70.2. says that, except to the extent that it has received information about an Applicant or Group Member's financial circumstances at the relevant time for the purpose of

determining the Applicant or Group Member's rights under the social security law, it does not know what those circumstances are;

70.3. repeats paragraphs ~~¶~~ 46.4 to 46.6 above; and

70.4. refers to and repeats paragraph 49 above; and

70.5. otherwise denies paragraph 70.

70A. In answer to paragraph 70A, the Respondent:

70A.1. says, with respect to subparagraphs 70A(b), (l) and (m), that Parts 4 and 4A of the Administration Act provided the Applicants and Group Members with rights of review in relation to debts identified as being owed by them;

70A.2. says, with respect to subparagraphs 70A(l) and (m), that the Applicants and Group Members were capable of accessing payment plans which would allow them to ameliorate any negative impacts any request or demand by the Commonwealth for repayment of an Asserted Overpayment Debt and associated penalty might have upon the Applicant or Group Member; and

70A.3. otherwise denies paragraph 70A.

71. In answer to paragraph 71, the Respondent:

71.1. denies that it owed the Applicants and Group Members the duty alleged;

71.2. says that neither the SSA nor the Administration Act (together, **Social Security Law**) impose, or otherwise mention, a requirement that due or reasonable care is to be exercised in the making of decisions under the Social Security Law;

71.3. says that in administering the Social Security Law, the Secretary is required to have regard to the desirability of achieving the delivery of services under the law in a fair, courteous, prompt and cost-efficient manner, the establishment of procedures to ensure that abuses of the social security system are minimised and the importance of the system of review of decisions under the social security law;

PARTICULARS

Administration Act section 8(a)(iii) and (v) and (d).

71.4. says that imposing a common law duty of care on the Respondent, as alleged or otherwise, in relation to the administration of the Social Security Law would:

71.4.1. impose a requirement on officers administering the Social Security Law to have regard to factors additional to, and inconsistent with, the requirements of the Social Security Law;

- 71.4.2. further or in the alternative, be inconsistent with the legislative intent of the Social Security Law for the establishment of procedures to ensure that abuses of the social security system are minimised; and

PARTICULARS

- (i) SSA sections 1222, 1223, 1228B, 1229, 1229A, 1229B, 1229C, 1229G, 1230C.
- (ii) Administration Act section 8(a)(v).

- 71.4.3. further or in the alternative, be inconsistent with the legislative intent of the Social Security Law that a decision made under the Social Security Law be subject to the system of review stipulated in Parts 4 and 4A of the Administration Act and not collateral proceedings in court for damages for negligence in the exercise of the statutory function;

PARTICULARS

Administration Act sections 8(a)(v) and (d), 126 and Part 4A.

71.5. otherwise denies paragraph 71.

72. The Respondent denies paragraph 72.

73. In answer to paragraph 73, the Respondent:

73.1. repeats paragraphs 10.5 and 10.6, 11 and 12 above; and

73.2. otherwise denies paragraph 73.

74. In answer to paragraph 74, the Respondent:

74.1. repeats sub-paragraphs 14.3 to 14.4 and 15.1 above; and

74.2. otherwise denies paragraph 74.

75. In answer to paragraph 75, the Respondent

75.1. repeats sub-paragraphs 20.4 to 20.5 and paragraphs 23 to 24 above; and

75.2. otherwise denies paragraph 75.

76. In answer to paragraph 76, the Respondent:

76.1. repeats sub-paragraphs 28.7 to 28.8 and paragraph 29 above; and

76.2. otherwise denies paragraph 76.

77. In answer to paragraph 77, the Respondent:

77.1. repeats sub-paragraphs 34.4 to 34.8 and paragraphs 35 to 36 above; and

77.2. otherwise denies paragraph 77.

77A. In answer to paragraph 77A, the Respondent:

77A.1. repeats sub-paragraphs 36B.6. to 36B.8. and paragraph 36F above; and

77A.2. otherwise denies paragraph 77A.

78. The Respondent denies paragraph 78.

79. In answer to paragraph 79, the Respondent:

79.1. denies that any of the Applicants or Group Members are entitled to the relief set out in the originating application; and

79.2. otherwise denies paragraph 79.

M. Exemplary and Aggravated damages

80. In answer to paragraph 80, the Respondent:

80.1. refers to and repeats paragraph 70A above; and

80.2. otherwise denies the paragraph.

81. The Respondent denies paragraph 81.

82. In answer to paragraph 82, the Respondent:

82.1. denies that any Applicants or Group Members are entitled to exemplary damages in respect to their claims in negligence; and

82.2. otherwise denies the paragraph.

83. In answer to paragraph 83, the Respondent:

83.1. says that the proper remedy to a claim in unjust enrichment or monies had and received is restitution;

83.2. exemplary damages are not available in respect of a cause of action for monies had or received or founded on unjust enrichment in Australia;

83.3. denies that any Applicants or Group members are entitled to exemplary damages in respect to their claims in unjust enrichment or monies had and received; and

83.4. otherwise denies the paragraph.

84. Denies paragraph 84:

85. In relation to paragraph 85 the Respondent refers to and repeats paragraph 79.

Date: ~~14 February 30 March 17 July 5 November~~ 2020



.....
Julian Ensbey AGS lawyer
for and on behalf of the Australian Government Solicitor
Lawyer for the Respondent

This pleading was prepared by: Michael Hodge
Zoe Maud
Mark Costello
Nicholas Bentley
Claire Roberts

CERTIFICATE OF LAWYER

I, Julian Ensbey certify to the Court that, in relation to the defence filed on behalf of the Respondent, the factual and legal material available to me at present provides a proper basis for:

1. each allegation in the pleading; and
2. each denial in the pleading; and
3. each non-admission in the pleading.

Date: 5 November 2020

A handwritten signature in black ink, appearing to read 'Julian Ensbey', written over a horizontal dotted line.

.....
Signed by Julian Ensbey
Lawyer for the Respondent