

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 19/11/2019 8:36:31 PM AEDT 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: Statement of Claim - Form 17 - Rule 8.06(1)(a)
File Number: VID1252/2019
File Title: KATHERINE PRYGODICZ & ORS v COMMONWEALTH OF AUSTRALIA
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 20/11/2019 9:45:31 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 17
Rule 8.05(1)(a)

Statement of Claim

No. _____ of 2019

Federal Court of Australia

District Registry: Victoria

Division: General

Katherine Prygodicz (and others named in the schedule)

Applicants

The Commonwealth of Australia

Respondent

A. PARTIES

1. This proceeding is commenced by the Applicants 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 (**Group Members**):

(a) who at any time after 1 July 2010 received from the Respondent (the **Commonwealth**) one or more payments of social security benefits of the kind set out in Annexure A to this Statement of Claim (**Social Security Payments**); 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 Social Security Payment entitlements and requesting,

Filed on behalf of (name & role of party)	Katherine Prygodicz & Ors – the Applicants		
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requiring or reminding the Social Security Payment recipient 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 Social Security 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.

- 2. As at the commencement of this proceeding there were 7 or more Group Members.
- 3. The Commonwealth is capable of being sued pursuant to sections 56 and/or 64 of the *Judiciary Act 1903* (Cth).

B. THE ROBODEBT SYSTEM

- 4. At all times after 1 July 2010, the amount of any Social Security Payments to which a recipient was entitled was calculated on the basis of their reported fortnightly income.
- 5. From about 1 July 2015, the Commonwealth, through Services Australia, introduced an automated debt raising and recovery system known as the Online Compliance Intervention System (**Robodebt System**) as part of a program known as “Better Management of Social Welfare System” initiative.
- 6. The Robodebt System:
 - (a) divided the total annual income received by a recipient of Social Security Payments according to data obtained from the Australian Taxation Office in the relevant financial year to produce a notional daily income figure;
 - (b) multiplied the notional daily income figure by 14 to produce a notional fortnightly income figure for the Social Security Payment recipient (**notional fortnightly income**);

- (c) assumed that the Social Security Payment recipient had received the notional fortnightly income every fortnight throughout the relevant financial year (**fortnightly income assumption**);
- (d) subtracted (i) the amount the Social Security Payment recipient actually received based upon their reported fortnightly income in the relevant year; from (ii) the amount the Social Security Payment recipient would have been entitled to receive in each fortnight of the relevant year based upon the fortnightly income assumption; (the **Social Security Payment differential**)
- (e) identified or characterised the Social Security Payment differential as an overpayment of Social Security Payments and a debt owed to the Commonwealth.

C. THE FIRST APPLICANT'S ASSERTED OVERPAYMENT DEBT

- 7. The First Applicant was the recipient of Social Security Payments (Newstart) from 26 November 2012 to 8 March 2013.
- 8. On 8 November 2016, the Commonwealth generated a Robodebt notification in respect of the First Applicant in which it asserted that there had been an overpayment of Newstart to the First Applicant which was recoverable by the Commonwealth as a debt (**First Applicant's Asserted Overpayment Debt**).

PARTICULARS

- (a) The assertion was made in a letter from Centrelink to the First Applicant dated 8 November 2016 entitled 'Important information about your employment income'.
- (b) A copy of the letter is in the possession of the solicitors for the Applicants and may be inspected by appointment.
- 9. The First Applicant's Asserted Overpayment Debt was an asserted debt raised by, or based upon calculations or other outputs of, the Robodebt System (**Robodebt-raised debts**)
- 10. From about 29 November 2016, the Commonwealth requested or demanded from the First Applicant repayment of the First Applicant's Asserted Overpayment Debt as well as an additional amount by way of penalty.

PARTICULARS

- (a) The demand was made by way of a letter from Centrelink to the First Applicant dated 29 November 2016 titled 'Your employment income review has been completed.'
- (b) The demand was in the amount of \$4,339.13.

- (c) On 10 October 2018, Centrelink reduced its demanded amount to \$2,905.03 after an internal review.
 - (d) Centrelink records with respect to the demand and internal review are in possession of the solicitors for the Applicants and may be inspected by appointment.
11. The Commonwealth has recovered from the First Applicant a portion of the First Applicant's Asserted Overpayment Debt and associated penalty.

PARTICULARS

- (a) On 9 July 2019, the First Applicant's 2017/2018 financial year tax return refund was garnished in the amount of \$142.54. On 24 October 2019, the First Applicant paid \$400.00 to Centrelink.
 - (b) Records with respect to the recoveries are in possession of the solicitors for the Applicants and may be inspected by appointment.
12. The remainder of the First Applicant's Asserted Overpayment Debt and associated penalty has not been paid by or on behalf of the First Applicant, and has not been recovered from her, but she has not been informed by the Commonwealth that no further recovery action will be pursued in respect of the First Applicant's Asserted Overpayment Debt and associated penalty.

PARTICULARS

The remainder of the First Applicant's Asserted Overpayment Debt is \$2,362.54.

D. THE SECOND APPLICANT'S ASSERTED OVERPAYMENT DEBT

13. The Second Applicant was the recipient of Social Security Payments (Youth Allowance) from 9 July 2011 to 22 June 2013 and (Newstart) from 24 June 2012 to 27 October 2012.
14. On or before 16 March 2018, the Commonwealth generated a Robodebt notification in respect of the Second Applicant and on about 16 March 2018 the Commonwealth asserted that there had been an overpayment of Newstart and Youth Allowance to the Second Applicant which was recoverable by the Commonwealth as a debt (**Second Applicant's Asserted Overpayment Debt**).

PARTICULARS

- (a) A debt was raised by Centrelink on 16 March 2018 in the amount of \$3,096.26.
 - (b) Centrelink documents recording the assertion of the debt are in the possession of the solicitors for the Applicants and may be inspected by appointment.
15. The Second Applicant's Asserted Overpayment Debt was a Robodebt-raised debt.

16. From about 19 March 2018, the Commonwealth requested or demanded from the Second Applicant repayment of the Second Applicant's Asserted Overpayment Debt.

PARTICULARS

- (a) The demand was made by Centrelink on 19 March 2018.
- (b) Centrelink documents recording the demand are in the possession of the solicitors for the Applicants and may be inspected by appointment.

17. The Commonwealth has recovered from the Second Applicant a portion of the Second Applicant's Asserted Overpayment Debt.

PARTICULARS

On 2 November 2018, the Second Applicant's 2017/2018 financial year tax return refund was garnished in the amount of \$803.96.

18. The remainder of the Second Applicant's Asserted Overpayment Debt and associated penalty has not been paid by or on behalf of the Second Applicant, and has not been recovered from her, but she has not been informed by the Commonwealth that no further recovery action will be pursued in respect of the Second Applicant's Asserted Overpayment Debt and associated penalty.

PARTICULARS

The remainder of the Second Applicant's Asserted Overpayment Debt is \$2,492.69.

Centrelink documents recording the amount are in the possession of the solicitors for the Applicants and may be inspected by appointment.

E. THE THIRD APPLICANT'S ASSERTED OVERPAYMENT DEBT

19. The Third Applicant was the recipient of Social Security Payments (Newstart) from 13 July 2011 to 27 June 2012 and from 2 October 2013 to 24 June 2015.

20. On 13 December 2018, the Commonwealth generated a Robodebt notification in respect of the Third Applicant in which it asserted that there had been an overpayment of Newstart to the Third Applicant which was recoverable by the Commonwealth as a debt (**Third Applicant's Asserted Overpayment Debt**).

PARTICULARS

The assertion was made by way of a letter from Centrelink to the Third Applicant dated 13 December 2018 entitled 'Account Payable'.

A copy of the letter is in the possession of the solicitors for the Applicants and may be inspected by appointment.

21. The Third Applicant's Asserted Overpayment Debt was a Robodebt-raised debt.
22. From about 13 December 2018, the Commonwealth requested or demanded from the Third Applicant repayment of the Third Applicant's Asserted Overpayment Debt.

PARTICULARS

A demand was made by Centrelink on 13 December 2018 for repayment of the debt alleged for the period 2 October 2013 to 24 June 2015 (the **First Debt Period**). The demand was made in the amount of \$4,339.13.

On 14 January 2019, Centrelink made a demand for \$4,351.07

On 3 October 2019, Centrelink reduced the amount of its demand for the First Debt Period to \$4,241.69 and raised a second debt against the Third Defendant, for the period 13 July 2011 to 27 June 2012, in the amount of \$1,896.91.

Centrelink documents recording the demands are in the possession of the solicitors for the Applicants and may be inspected by appointment.

23. The Commonwealth has recovered from the Third Applicant a portion of the Third Applicant's Asserted Overpayment Debt and associated penalty.

PARTICULARS

On 26 July 2019, the Third Applicant's 2017/2018 financial year tax return refund was garnished in the amount of \$4,513.01, leaving a tax refund available to the Third Applicant of \$2,585.95 from an estimated return of \$7,098.96.

MyGov records recording the tax refund made available to the Third Applicant are in the in the possession of the solicitors for the Applicants and may be inspected by appointment.

24. The remainder of the Third Applicant's Asserted Overpayment Debt and associated penalty has not been paid by or on behalf of the Third Applicant, and has not been recovered from him, but he has not been informed by the Commonwealth that no further recovery action will be pursued in respect of the Third Applicant's Asserted Overpayment Debt and associated penalty.

PARTICULARS

The remainder of the Third Applicant's Asserted Overpayment Debt is \$1,625.59, being the difference between the amount of the total debt alleged against the Third Applicant and the amount the Commonwealth has recovered from the Third Applicant.

F. THE FOURTH APPLICANT'S ASSERTED OVERPAYMENT DEBT

25. The Fourth Applicant was the recipient of Social Security Payments (Youth Allowance) from 2 May 2012 to 30 September 2014.

26. On 4 August 2016 and 11 August 2016, the Commonwealth generated Robodebt notifications in respect of the Fourth Applicant in which it asserted that there had been an overpayment of Youth Allowance to the Fourth Applicant which was recoverable by the Commonwealth as a debt (**Fourth Applicant's Asserted Overpayment Debt**).

PARTICULARS

The assertions were made by way of letters from Centrelink to the Fourth Applicant dated 4 August 2016 entitled 'You need to confirm your employment income' and dated 11 August 2016 entitled 'You need to confirm your employment income'.

Copies of the letters of Centrelink are in the possession of the solicitors for the Applicants and may be inspected by appointment.

27. The Fourth Applicant's Asserted Overpayment Debt was a Robodebt-raised debt.
28. From about 6 September 2016, the Commonwealth requested or demanded from the Fourth Applicant repayment of the Fourth Applicant's Asserted Overpayment Debt.

PARTICULARS

The demand was made by way of a letter from Centrelink to the Fourth Applicant dated 6 September 2016 entitled 'Account Payable.'

The demand in the amount of \$11,303.77.

Centrelink records with respect to the demand and internal review are in possession of the solicitors for the Applicants and may be inspected by appointment.

29. The Commonwealth has recovered from the Fourth Applicant a portion of the Fourth Applicant's Asserted Overpayment Debt.

PARTICULARS

On or about February 2017, the Fourth Applicant entered into a payment plan with respect to the Fourth Applicant's Asserted Overpayment Debt. The Fourth Applicant currently pays \$20 per fortnight under the payment plan.

Centrelink records recording payment plan entered into by the Fourth Applicant are in the in the possession of the solicitors for the Applicants and may be inspected by appointment.

30. The remainder of the Fourth Applicant's Asserted Overpayment Debt and associated penalty has not been paid by or on behalf of the Fourth Applicant, and has not been recovered from her, but she has not been informed by the Commonwealth that no further recovery action will be pursued in respect of the Fourth Applicant's Asserted Overpayment Debt and associated penalty.

PARTICULARS

The remainder of the Fourth Applicant's Asserted Overpayment Debt is \$9,928.66, being the difference between the amount of the total debt alleged against the Fourth Applicant and the amount the Commonwealth has recovered from the Fourth Applicant, as at 29 October 2019.

G. THE FIFTH APPLICANT'S ASSERTED OVERPAYMENT DEBT

31. The Fifth Applicant was the recipient of Social Security Payments (Newstart) from 24 April 2014 to 19 June 2014.
32. On about 30 October 2016, the Commonwealth generated a Robodebt notification in respect of the Fifth Applicant in which it asserted that there had been an overpayment

of Newstart to the Fifth Applicant which was recoverable by the Commonwealth as a debt (**Fifth Applicant's Asserted Overpayment Debt**).

PARTICULARS

The assertion was made in a letter from Centrelink to the Fifth Applicant dated 30 October 2016 entitled 'Important information about your employment income'.

A copy of the letter is in the possession of the solicitors for the Applicants and may be inspected by appointment.

33. The Fifth Applicant's Asserted Overpayment Debt was a Robodebt-raised debt.
34. From about 21 November 2016, the Commonwealth requested or demanded from the Fifth Applicant repayment of the Fifth Applicant's Asserted Overpayment Debt as well as an additional amount by way of penalty.

PARTICULARS

(a) The demand was made by way of a letter from Centrelink to the Fifth Applicant dated 21 November 2016 titled 'Your employment income review has been completed.'

(b) The demand was in the amount of \$2,602.65.

(c) A copy of the demand letter is in the possession of the solicitors for the Applicants and may be inspected by appointment.

(d) On 6 February 2019, a recovery fee component of the debt in the amount of \$236.60 was waived by Centrelink, reducing the debt amount to \$2,366.05.

(e) Centrelink records with respect to the debt amount are in possession of the solicitors for the Applicants and may be inspected by appointment.

35. The Commonwealth has recovered from the Fifth Applicant a portion of the Fifth Applicant's Asserted Overpayment Debt and associated penalty.

PARTICULARS

On 4 December 2018, the Fifth Applicant's 2017/2018 financial year tax return refund was garnished in the amount of \$1,162.95.

Centrelink Records with respect to the recovery are in possession of the solicitors for the Applicants and may be inspected by appointment.

36. The remainder of the Fifth Applicant's Asserted Overpayment Debt and associated penalty has not been paid by or on behalf of the Fifth Applicant, and has not been recovered from her, but she has not been informed by the Commonwealth that no further recovery action will be pursued in respect of the Fifth Applicant's Asserted Overpayment Debt and associated penalty.

PARTICULARS

The remainder of the Fifth Applicant's Asserted Overpayment Debt is \$1,203.11.

H. GROUP MEMBERS' ASSERTED OVERPAYMENT DEBTS

37. After 1 July 2015, the Commonwealth generated a Robodebt notification in respect of each Group Member.

PARTICULARS

Particulars will be provided after trial of the Applicants' claims.

38. By or following the Robodebt notification in respect of each Group Member, the Commonwealth asserted that there had been overpayments of Social Security Payments to each Group Member recoverable by the Commonwealth as debts.

PARTICULARS

Particulars will be provided after trial of the Applicants' claims.

39. The Asserted Overpayment Debts in respect of each Group Member were Robodebt-raised debts.
40. After 1 July 2015 the Commonwealth requested or demanded from each Group Member repayment of their respective Asserted Overpayment Debts and, in respect of some Group Members, an additional amount way of penalty.

PARTICULARS

Particulars will be provided after trial of the Applicants' claims.

41. Each Group member:
- (a) has paid, had paid on their behalf, or had recovered from them, their respective Asserted Overpayment Debts or part thereof and any associated penalty; and/or
 - (b) has not been informed by the Commonwealth that no recovery action will be pursued in respect of their respective Asserted Overpayment Debts or any outstanding part thereof and any associated penalty.

PARTICULARS

Particulars will be provided after trial of the Applicants' claims.

I. ASSERTED OVERPAYMENT DEBTS ARE NOT DEBTS

42. Since before 1 July 2015, pursuant to section 1222A(a) of the *Social Security Act 1991* (Cth) (**SSA**), if an amount has been paid by way of Social Security Payment the amount is a debt due to the Commonwealth only if a provision of the SSA, the 1947 Act (as defined), the *Social Security (Fares Allowance) Rules 1998* or the *Data-matching Program (Assistance and Tax) Act 1990* (Cth) expressly so provides.
43. Since before 1 July 2015, pursuant to section 1223(1) of the SSA, if an amount has been paid by way of Social Security Payment and a person who obtained the benefit

of the payment was not entitled for any reason to obtain that benefit, the amount of the payment is a debt due to the Commonwealth by the person and the debt is taken to arise when the person obtained the benefit of the payment.

44. Since before 1 July 2015, pursuant to section 1228B of the SSA, in the circumstances referred to therein, an amount by way of penalty may be added to a debt due to the Commonwealth by a person arising during the relevant period.
45. The Asserted Overpayment Debts in respect of each Applicant and Group Member were Robodebt-raised debts.
46. By reason of the following, the calculations or other outputs of the Robodebt System did not establish, and were not capable of establishing, for the purposes of section 1223(1) of the SSA, that a person who obtained the benefit of an amount paid by way of Social Security Payment was not entitled to obtain that benefit such that the amount of the Social Security Payment is a debt due to the Commonwealth:
 - (a) the notional fortnightly income was not the actual fortnightly income of any Applicant or Group Member and was not necessarily referable to or indicative of actual income in any fortnight;
 - (b) the fortnightly income assumption was therefore false;
 - (c) the entitlement to Social Security Payments was based upon actual fortnightly income and because the fortnightly income assumption was false it could not establish the entitlement of any Applicant or Group Member to Social Security Payments in any fortnight;
 - (d) the Social Security Payment differential was therefore not an overpayment of Social Security Payments or a debt owed to the Commonwealth.
47. No provision of the SSA, the 1947 Act (as defined), the *Social Security (Fares Allowance) Rules 1998* or the *Data-matching Program (Assistance and Tax) Act 1990* (Cth) expressly provided that Robodebt-raised debts were debts due to the Commonwealth.
48. There was no statutory or other onus on the Applicants and Group Members to establish that a Robodebt-raised debt was not a debt due to the Commonwealth within the meaning of section 1222A of the SSA.
49. In the premises:

- (a) no Asserted Overpayment 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
- (b) 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.

J. UNJUST ENRICHMENT

50. The Commonwealth has been enriched by, and in the amount of, the Asserted Overpayment Debt or part thereof, and any penalty thereupon, paid by or on behalf of, or recovered from, each Applicant and Group Member (**Commonwealth recovered amount**).

51. The enrichment of the Commonwealth by receipt of each Commonwealth recovered amount was at the direct or indirect expense of the Applicant or Group Member by or on behalf of whom the Commonwealth recovered amount was paid or from whom a Commonwealth recovered amount was recovered.

(a) ***Unjust enrichment without lawful basis***

52. By reason of the matters pleaded in paragraphs 42 to 49 above, the recovery by the Commonwealth of the Commonwealth recovered amount from each Applicant and Group Member was ultra vires and unlawful.

53. In the premises, the enrichment of the Commonwealth by receipt of each Commonwealth recovered amount was unjust.

(b) ***Unjust enrichment by mistaken payment***

54. Further or in the alternative, at the time that each Applicant and Group Member paid, or caused to be paid on their behalf, their respective Commonwealth recovered amount, each did so under, and by reason of, one or more of the following beliefs:

- (a) the Applicant and Group Member was under a legal obligation to pay the Asserted Overpayment Debt and any penalty thereon;
- (b) the Commonwealth was legally entitled to repayment or recovery of the Asserted Overpayment Debt and any penalty thereon;
- (c) the Asserted Overpayment Debt and any penalty thereon was in fact a debt or otherwise owed to the Commonwealth.

(valid debt beliefs)

55. By reason of the matters pleaded in paragraphs 42 to 49 above, the valid debt beliefs held by each Applicant and Group Member were mistaken.

56. In the premises, the enrichment of the Commonwealth by receipt of each Commonwealth recovered amount was unjust.

(c) ***Unjust enrichment on a basis that failed***

57. Further or in the alternative, each Commonwealth recovered amount was paid by or on behalf of, or recovered from, the relevant Applicant or Group Member on one or more of the following bases:

- (a) the Applicant and Group Member was under a legal obligation to pay the Asserted Overpayment Debt and any penalty thereon;
- (b) the Commonwealth was legally entitled to repayment or recovery of the Asserted Overpayment Debt and any penalty thereon;
- (c) the Asserted Overpayment Debt and any penalty thereon was in fact a debt or otherwise owed to the Commonwealth.

(debt recovery bases)

58. By reason of the matters pleaded in paragraphs 42 to 49 above, each of the debt recovery bases failed.

59. In the premises, the enrichment of the Commonwealth by receipt of each Commonwealth recovered amount was unjust.

(d) ***Unjust enrichment by compulsion or duress colore officii***

60. Further or in the alternative, each Commonwealth recovered amount was recovered from the relevant Applicant and Group Member by compulsion and/or duress *colore officii* in that:

- (a) the Commonwealth required or demanded repayment of any Asserted Overpayment Debt and associated penalty or part thereof under colour of statutory power and authority;
- (b) the Commonwealth had a range of coercive powers of enforcement and penalisation in respect of recovery of the Asserted Overpayment Debts including powers to penalise for non-payment, garnish wages and salary, appropriate income tax refunds, reduce Social Security Payments in part or whole and prevent overseas travel;

- (c) by reason of the matters pleaded in paragraphs 42 to 49 above, the Commonwealth had no lawful basis to raise, require or demand repayment of, or take any recovery action in respect of, any Asserted Overpayment Debt and associated penalty or part thereof, or to recover or receive any of the Commonwealth recovered amounts;
- (d) each Applicant and Group Member paid the Commonwealth recovered amounts involuntarily and by reason of coercion and/or duress *colore officij*, alternatively the Commonwealth recovered the Commonwealth recovered amounts by exercise of coercive powers of recovery and without the consent of the Applicant and Group Members.

61. In the premises, the enrichment of the Commonwealth by receipt of each Commonwealth recovered amount was unjust.

(e) ***Unjust enrichment by unlawful conduct***

62. Further or in the alternative, each Commonwealth recovered amount was paid by or on behalf of, or recovered from, the relevant Applicant or Group Member by reason of the Commonwealth's tortious conduct alleged in Part L below.

In the premises, the enrichment of the Commonwealth by receipt of each Commonwealth recovered amount was unjust.

K. MONIES HAD AND RECEIVED

63. Further or in the alternative, by reason of the matters pleaded in paragraphs 42 to 49 above, each Commonwealth recovered amount was paid by or on behalf of, or recovered from, the relevant Applicant or Group Member in circumstances where:

- (a) the recovery of the Commonwealth recovered amount was ultra vires and unlawful;
- (b) the payment of the Commonwealth recovered amount was under, and by reason of, a mistake; and/or
- (c) the payment or recovery of the Commonwealth recovered amount was on a basis that failed.

PARTICULARS

The Applicants refer to paragraphs 42 to 49 above.

64. Each Commonwealth recovered amount was money had and received by the Commonwealth to the use of the Applicant and Group Member by or on behalf of whom it was paid or from whom it was recovered.

65. In the premises, each Applicant and Group Member is entitled to the return of their respective Commonwealth recovered amount.

L. NEGLIGENCE

(a) *Duty of Care*

66. From before 1 July 2015, the Commonwealth has had exclusive statutory power and capacity to:

- (a) assess and determine whether each Applicant and Group Member was or is entitled to Social Security Payments;
- (b) assess and determine the amount of the Social Security Payments to which each Applicant and Group Member was or is entitled on the basis of their respective reported fortnightly income;
- (c) raise and recover debts arising from overpayments of Social Security Payments to each Applicant and Group Member;
- (d) obtain from the Applicants and Group Members information evidencing, demonstrating and/or verifying actual fortnightly income for use for the purposes of the functions referred to in (a) – (c) above;
- (e) in raising and recovering debts arising from overpayments of Social Security Payments to the Applicants and Group Members, use the actual fortnightly income rather than the notional fortnightly income and fortnightly income assumption for each Applicant and Group Member;
- (f) request or demand repayment of any overpayment of Social Security Payments and any associated penalties and determine the means by which such overpayments may be recovered.

67. Further, from before 1 July 2015, the Commonwealth has assumed exclusive responsibility for the exercise of the following functions:

- (a) assessment and determination of the amount of Social Security Payments to which each Applicant and Group Member was or is entitled on the basis of their respective reported fortnightly income;
- (b) obtaining from the Applicants and Group Members information evidencing, demonstrating and/or verifying actual fortnightly income for use in discharging the function in (a) above;
- (c) raising and recovering debts arising from overpayments of Social Security Payments to each Applicant and Group Member;

- (d) requesting or demanding repayment of asserted overpayments of Social Security Payments and determining the means by which such overpayments would be recovered.
68. By reason of the matters pleaded in the two preceding paragraphs, from 1 July 2015, the Commonwealth has had and exercised exclusive control over the matters referred to therein (**Commonwealth-controlled functions**).
69. Further, the Applicants and Group Members were vulnerable to any unlawful or unreasonable exercise or discharge of the Commonwealth-controlled functions in that:
- (a) the Commonwealth-controlled functions were exercised or discharged under *colore officii*, the Commonwealth occupying a position of power and authority over the Applicants and Group Members;
 - (b) the Applicants and Group Members were, by definition, persons who were financially vulnerable in that they required their Social Security Payments to meet their living expenses and had limited ability to save, borrow or otherwise acquire money in the event that the Commonwealth incorrectly or unreasonably asserted overpayment of any Social Security Payment and sought to recover such overpayment as a debt;
 - (c) the Commonwealth had a range of coercive powers of enforcement and penalisation in respect of recovery of the Asserted Overpayment Debts including powers to penalise for non-payment, garnish wages and salary, appropriate income tax benefits, reduce Social Security Payments in part or whole and prevent overseas travel;
 - (d) the Applicants and Group Members laboured under the valid debt beliefs and/or assumed the correctness of the debt recovery bases;
 - (e) the Applicants and Group Members had insufficient resources, knowledge or capacity to question, challenge or demonstrate the falsity of the valid debt beliefs or the debt recovery bases or to scrutinise and challenge the manner of exercise of the Commonwealth-controlled functions;
 - (f) the Applicants and Group Members had impaired capacity to question, challenge or demonstrate the falsity of the valid debt beliefs and/or debt valid recovery bases because:
 - (i) by reason of effluxion of time between the Commonwealth's request or demand for repayment of any Asserted Overpayment

Debt and the payment of the Social Security Payment to which it was alleged to relate, the Applicants and Group Members were unlikely to have retained or have access to documents or records contradicting the fortnightly income assumption and the Social Security Payment differential; and

- (ii) until 8 January 2017 at the latest it was Centrelink's recommendation that a Social Security Payment recipient keep their income records for at least 6 months such that it was reasonable to assume that it was unnecessary to retain them for longer.

70. Further, from 1 July 2015, the following matters were reasonably foreseeable to the Commonwealth:

- (a) the vulnerability of the Applicants and Group Members by reason of the matters pleaded in the previous paragraph;
- (b) if the Commonwealth-controlled functions were exercised without reasonable care the Applicants and Group Members may be erroneously deprived of Social Security Payments or parts thereof to which they were entitled or have penalties imposed upon them and may suffer financial loss and hardship;
- (c) the notional fortnightly income was not the actual fortnightly income of any Applicant or Group Member and was not necessarily referable to or indicative of actual income in any fortnight;
- (d) the fortnightly income assumption was therefore false;
- (e) the entitlement to Social Security Payments was based upon actual fortnightly income and, because the fortnightly income assumption was false, it could not establish the entitlement of any Applicant or Group Member to Social Security Payments in any fortnight;
- (f) the Social Security Payment differential was therefore not an overpayment of Social Security Payments or a debt owed to the Commonwealth;
- (g) any request or demand by the Commonwealth for repayment of an Asserted Overpayment Debt and associated penalty, and any threatened, foreshadowed or actual recovery action in respect thereof would cause significant concern, stress, anxiety and stigma for the Applicants and Group Members;

- (h) any recovery by the Commonwealth of an Asserted Overpayment Debt and associated penalty could cause significant financial hardship for the Applicants and Group Members.
71. In the premises, the Commonwealth owed the Applicant and Group Members a duty to take reasonable care to avoid causing them loss and damage by reason of:
- (a) the exercise or discharge of the Commonwealth-controlled functions;
 - (b) the raising and assertion of Asserted Overpayment Debts;
 - (c) requests or demands for repayment of Asserted Overpayment Debts and associated penalties;
 - (d) recovery or attempted recovery of Asserted Overpayment Debts and associated penalties.
- (b) ***Breach of Duty***
72. By reason of the matters pleaded in paragraphs 42 to 49 above, the Commonwealth breached its duty of care to the Applicants and Group Members by using the calculations or other outputs of the Robodebt System as the basis for the:
- (a) exercise and discharge of the Commonwealth-controlled functions;
 - (b) raising and assertion of the Asserted Overpayment Debts;
 - (c) requests or demands for repayment of any Asserted Overpayment Debt and associated penalties;
 - (d) recovery or attempted recovery of any Asserted Overpayment Debt and associated penalty.
- (c) ***Causation and Loss and Damage***
73. By reason of the breach by the Commonwealth of its duty of care to the First Applicant, she has suffered loss and damage.

PARTICULARS

- (a) The First Applicant has suffered the loss of \$542.54 being the Commonwealth recovered amount recovered from her.
- (b) The First Applicant has suffered the loss of use of the Commonwealth recovered amount recovered from her.
- (c) The First Applicant remains liable to pay to the Commonwealth the remainder of the Commonwealth recovered amount.
- (d) The First Applicant has suffered the stress, anxiety and stigma associated with the request or demand for, and threatened or actual, recovery of her Asserted Overpayment Debts.

74. By reason of the breach by the Commonwealth of its duty of care to the Second Applicant, she has suffered loss and damage.

PARTICULARS

- (a) The Second Applicant has suffered the loss of \$803.96 being the Commonwealth recovered amount recovered from her.
- (b) The Second Applicant has suffered the loss of use of the Commonwealth recovered amount recovered from her.
- (c) The Second Applicant remains liable to pay to the Commonwealth the remainder of the Commonwealth recovered amount.
- (d) The Second Applicant has suffered the stress, anxiety and stigma associated with the request or demand for, and threatened or actual, recovery of her Asserted Overpayment Debts.

75. By reason of the breach by the Commonwealth of its duty of care to the Third Applicant, he has suffered loss and damage.

PARTICULARS

- (a) The Third Applicant has suffered the loss of \$4,513.01 being the Commonwealth recovered amount recovered from him.
- (b) The Third Applicant has suffered the loss of use of the Commonwealth recovered amount recovered from him.
- (c) The Third Applicant remains liable to pay to the Commonwealth the remainder of the Commonwealth recovered amount.
- (d) The Third Applicant has suffered the stress, anxiety and stigma associated with the request or demand for, and threatened or actual, recovery of her Asserted Overpayment Debts.

76. By reason of the breach by the Commonwealth of its duty of care to the Fourth Applicant, she has suffered loss and damage.

PARTICULARS

- (a) The Fourth Applicant has suffered the loss of \$1,375.01 being the Commonwealth recovered amount recovered from her.
- (b) The Fourth Applicant has suffered the loss of use of the Commonwealth recovered amount recovered from her.
- (c) The Fourth Applicant remains liable to pay to the Commonwealth the remainder of the Commonwealth recovered amount.
- (d) The Fourth Applicant has suffered the stress, anxiety and stigma associated with the request or demand for, and threatened or actual, recovery of her Asserted Overpayment Debts.

77. By reason of the breach by the Commonwealth of its duty of care to the Fifth Applicant, she has suffered loss and damage.

PARTICULARS

- (a) The Fifth Applicant has suffered the loss of \$1,162.95 being the Commonwealth recovered amount recovered from her.

- (b) The Fifth Applicant has suffered the loss of use of the Commonwealth recovered amount recovered from her.
 - (c) The Fifth Applicant remains liable to pay to the Commonwealth the remainder of the Commonwealth recovered amount.
 - (d) The Fifth Applicant has suffered the stress, anxiety and stigma associated with the request or demand for, and threatened or actual, recovery of her Asserted Overpayment Debts.
78. By reason of the breach by the Commonwealth of its duty of care to the Group Members, each has suffered loss and damage.

PARTICULARS

- (a) Each Group Member has suffered the loss of the Commonwealth recovered amount recovered from each.
 - (b) Each Group Member has suffered the loss of use of the Commonwealth recovered amount recovered from each.
 - (c) Each Group Member remains liable to pay to the Commonwealth the remainder of the Commonwealth recovered amount.
 - (d) Each Group Member has suffered the stress, anxiety and stigma associated with the request or demand for, and threatened or actual, recovery of their respective Asserted Overpayment Debts.
79. The Applicants claim the relief set out in the originating application on their own behalf and on behalf of the group members.

Date: 19 November 2019

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

Signed by James Naughton
Lawyer for the Applicants

This pleading was prepared by: Jack T. Rush

Bernard F. Quinn

Georgina A. Costello

Andrew C. Roe

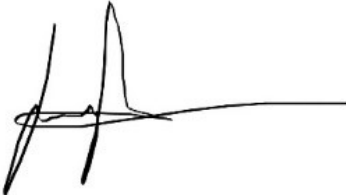
Annexure A

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

Certificate of lawyer

I, James Naughton, certify to the Court that, in relation to the statement of claim filed on behalf of the Applicants, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 19 November 2019

A handwritten signature in black ink, consisting of a stylized 'J' and 'N' followed by a horizontal line extending to the right.

Signed by James Naughton
Lawyer for the Applicants

Schedule

No. of 20

Federal Court of Australia
District Registry: Victoria
Division: General

Applicants

First Applicant: Katherine Prygodicz

Second Applicant: Elyane Porter

Third Applicant: Steven Fritze

Fourth Applicant: Felicity Button

Fifth Applicant: Shannon Thiel

Respondent: Commonwealth of Australia