



Federal Court of Australia  
District Registry: Victoria  
Division: General

No: VID1252/2019

**KATHERINE PRYGODICZ** and others named in the schedule  
Applicant

**COMMONWEALTH OF AUSTRALIA**  
Respondent

### **ORDER**

**JUDGE:** JUSTICE MURPHY

**DATE OF ORDER:** 17 August 2020

**WHERE MADE:** Melbourne

### **THE COURT ORDERS THAT:**

#### **Opt Out**

1. Orders 6 to 9 of the orders of Justice Murphy dated 6 March 2020 are varied in respect of two groups of persons.
2. The two groups of persons affected by these orders are:
  - (a) persons who were not identified as Group Members by the Respondent as at 25 May 2020, but who the Respondent has subsequently identified as Group Members; and
  - (b) the representatives of deceased estates of persons who were Group Members, where the Respondent holds contact details for those representatives.
3. For those persons in the two groups identified at paragraph 2 above:
  - (a) pursuant to s 33J(1) of the *Federal Court of Australia Act 1976* (Cth) (**FCAA**), 4.00 pm on 14 September 2020 be fixed as the time before which a Group Member in one of these two groups may opt out of this proceeding;
  - (b) pursuant to s 33Y(2) of the FCAA, the form and content of the notice set out in **Annexure A** to these orders is approved;



- (c) pursuant to s 33Y(3) of the FCAA, notice shall be given by no later than 24 August 2020 and by the following methods:
- (i) in respect of the group identified at paragraph 2(a) above by:
    - (1) where possible the Respondent shall cause the Notice to be sent to each Group Member's MyGov Account which is linked to Services Australia;
    - (2) where a Group Member does not have a MyGov account linked to the Respondent will use its best endeavours to send the notice by mail to the Group Members last known address
  - (ii) in respect of the group identified at paragraph 2(b) above, by the Respondent using the best available contact details available to it to send a letter to the estate annexing the opt out notice, with the terms of such letter to be agreed between the Applicants and the Respondent.

### **Pleadings**

4. By 4.00 pm on 18 August 2020, the Respondent must advise the Applicants as to the basis on which it opposes leave being granted to the Applicants to amend the Further Amended Statement of Claim filed 1 July 2020 in accordance with the proposed second further amended statement of claim dated 12 August 2020 (**2FASOC**).
5. By 4.00 pm on 25 August 2020, the Applicants must provide any response to the matters raised by the Respondent pursuant to paragraph 4 of these orders and/or any further version of the 2FASOC.
6. The application for leave to amend the Further Amended Statement of Claim filed 1 July 2020 is listed for interlocutory hearing on 31 August 2020 at 10.15 am.

### **Affidavit Evidence**

7. On or before 4.00 pm on 25 August 2020, the Applicants file and serve any further lay affidavit evidence on which they intend to rely, comprising:
  - (a) the lay evidence of the Sixth Applicant, Devon Collins; and
  - (b) any further evidence on liability.



8. On or before 4.00 pm on 8 September 2020, the Respondent file and serve any lay affidavit evidence on which it intends to rely in response to any affidavits filed pursuant to Order 7 of these orders.

### **Discovery**

9. By 4.00 pm on 21 August 2020, the Applicants file and serve any application for further and better discovery, together with any evidence and submissions in support.
10. The Respondent file and serve any evidence and/or submissions in response to any application filed pursuant to paragraph 9 of these orders by 4.00 pm on 27 August 2020.
11. Any application made under paragraph 9 of these orders is listed for hearing on 31 August 2020 at 10.15 am.

### **Other Matters**

12. The matter is listed for a further case management hearing on 31 August 2020 at 10.15 am.
13. Costs be reserved.
14. Liberty to apply.

Date that entry is stamped: 17 August 2020

*Sia Lagos*  
Registrar



## Schedule

No: VID1252/2019

Federal Court of Australia

District Registry: Victoria

Division: General

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



## ANNEXURE A

### OPT OUT NOTICE FEDERAL COURT OF AUSTRALIA 'Robodebt' (Social Security Debt Collection) Class Action (VID1252/2019)

#### 1. Why is this notice important?

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

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

#### 2. What is a class action?

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

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

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

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



might have against the Respondent which arise in any way out of the events or transactions which are the subject-matter of the class action.

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

### **3. What is this class action?**

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

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

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

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

### **4. What is ‘Opt Out’?**

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

### **5. Are you a class member?**

You are a class member if you:

- (a) at any time after 1 July 2010 received from the Commonwealth (through Centrelink) one or more payments of:
- (a) Newstart Allowance;
  - (b) Youth Allowance;
  - (c) Disability Support Pension;
  - (d) Austudy Allowance;
  - (e) Age Pension;



- (f) Carer Payment;
- (g) Parenting Payment;
- (h) Partner Allowance;
- (i) Sickness Allowance;
- (j) Special Benefit;
- (k) Widow A Allowance; and
- (l) Widow B Pension,

and

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

If you are unsure whether or not you are a class member, you should contact Gordon Legal at the Gordon Legal Robodebt website:

[www.gordonlegal.com.au/robodebt-class-action/](http://www.gordonlegal.com.au/robodebt-class-action/)

If you are unable to access the website, you can contact Gordon Legal by phone on 1300 001 356.

Or, you should seek your own legal advice without delay.

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

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

- (a) if the preparation or finalisation of your personal claim requires work to be done in relation to issues that are specific to your claim, you can engage Gordon Legal or other lawyers to do that work for you. A copy of the terms on which Gordon Legal are acting in the class action may be obtained from them on the number shown below;
- (b) if any restitution or compensation becomes payable to you as a result of any order, judgment or settlement in the class action, the Court may make an order that some of that compensation be used to help pay a share of the costs which are incurred by the Applicants in running the class action but which are not able to be recovered from the Respondent; and



(c) class actions are often settled out of court. If this occurs in the class action, you may be able to claim from the settlement amount without retaining a lawyer.

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

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

## 8. What class members need to do

### (a) How you can remain a class member?

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

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

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

**If you wish to opt out** of the class action you **must** do so by completing a “**Notice of opting out by class member**” in the form shown below (Form 21 of the Court's approved forms), then returning it to the Registrar of the Federal Court of Australia at the address on the form. **IMPORTANT: the Notice must reach the Registrar by no later than 14 September 2020**, otherwise it will not be effective.

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

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

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

## 9. Where can you obtain copies of relevant documents?

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





- (a) downloading them from [www.gordonlegal.com.au/robodebt-class-action/](http://www.gordonlegal.com.au/robodebt-class-action/);
- (b) inspecting them between 9am and 5pm at one of the offices of Gordon Legal, contact details for which are available from [www.gordonlegal.com.au/robodebt-class-action/](http://www.gordonlegal.com.au/robodebt-class-action/) or by calling 1300 001 356;
- (c) by contacting a District Registry of the Federal Court (contact details are available [www.fedcourt.gov.au](http://www.fedcourt.gov.au)) and paying the appropriate inspection fee; or
- (d) where appropriate arrangements have been made with the Court, inspecting them on the Federal Court website at [www.fedcourt.gov.au](http://www.fedcourt.gov.au).

Please consider the above matters carefully. If there is anything of which you are unsure, you should contact Gordon Legal at the Gordon Legal Robodebt website:

[www.gordonlegal.com.au/robodebt-class-action/](http://www.gordonlegal.com.au/robodebt-class-action/)

If you are unable to access the website, you can contact Gordon Legal by phone on 1300 001 356.

Or, you can seek your own legal advice. You should not delay in making your decision.



Form 21  
Rule 9.34

## OPT OUT NOTICE

No. VID 1252 of 2019

Federal Court of Australia  
District Registry: Victoria  
Division: General

**Katherine Prygodicz** and others  
Applicants

**Commonwealth of Australia**  
Respondent

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



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

Date: [eg 19 June 20..]

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Signed by [Name]

[Insert capacity eg group member / Lawyer for the group member]