



Australian Government Solicitor

DEED OF SETTLEMENT

DEED IN RELATION TO PRYGODICZ & ORS V COMMONWEALTH OF AUSTRALIA (VID1252/2019)

Commonwealth of Australia
(**Commonwealth** or **Respondent**)

AND

Katherine Prygodicz
(**First Applicant**)

Elyane Porter
(**Second Applicant**)

Steven Fritze
(**Third Applicant**)

Felicity Button
(**Fourth Applicant**)

Shannon Thiel
(**Fifth Applicant**)

Devon Collins
(**Sixth Applicant**)

AND

Gordon Legal (ABN 19 624 972 836)

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DEED OF SETTLEMENT

DEED IN RELATION TO PRYGODICZ & ORS V COMMONWEALTH OF AUSTRALIA (VID1252/2019)

Date

This Deed is made on November 2020

Parties

This Deed is made between and binds the following parties:

1. Commonwealth of Australia
(**Commonwealth** or **Respondent**)

AND

2. Katherine Prygodicz
(**First Applicant**)
3. Elyane Porter
(**Second Applicant**)
4. Steven Fritze
(**Third Applicant**)
5. Felicity Button
(**Fourth Applicant**)
6. Shannon Thiel
(**Fifth Applicant**)
7. Devon Collins
(**Sixth Applicant**)

AND

8. Gordon Legal (ABN 19 624 972 836) of 181 William Street, Melbourne VIC 3000

Context

This Deed is made in the following context:

- A. On 20 November 2019 the Applicants commenced a representative proceeding against the Respondent pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) in the Federal Court of Australia, being proceeding no. VID1252/2019.
- B. In the Statement of Claim filed on 20 November 2019, and subsequently amended on 16 March 2020, 1 July 2020 and 17 September 2020, the Applicants allege that the Group Members are those persons who:

- (1) At any time after 1 July 2015 received from the Respondent one or more payments of social security benefits as set out in the Second Further Amended Statement of Claim;
 - (2) in respect of whom the Commonwealth, at any time after 1 July 2015:
 - (a) 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 [was] used by Centrelink in assessing Social Security Payment entitlements and requesting requiring or reminding the Social Security Payment recipient to check, confirm or update employment income information; and
 - (b) by or following such notification, asserted an overpayment of one or more Social Security Payments recoverable by the Commonwealth as a debt; and
 - (c) requested or demanded repayment of that debt or part thereof; and
 - (3) who
 - (a) have paid, had paid on their behalf, or had recovered from them any part of that debt; and / or
 - (b) have not been informed by the Commonwealth that no recovery action will be pursued in respect of that debt.
- C. In its Defence filed on 14 February 2020, and amended on 30 March 2020, 20 July 2020 and 6 November 2020, the Respondent denied the allegations that the Respondent:
- (1) was unjustly enriched by the recovery of those debts from the Applicants and Group Members; or
 - (2) has breached any duty of care owed to the Applicants and Group Members.
- D. On or about 29 May 2020, the Respondent 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.
- E. On or about 1 July 2020, the Respondent announced publicly that:
- (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
 - (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.
- F. The parties have agreed to settle the Claims in the Proceeding on the terms and conditions contained in this Deed, without any admission of liability by the Respondent.

- G. This Deed has been entered into by the Applicants for and on behalf of the Group Members pursuant to Part IVA of the Act.

Operative provisions

In consideration of the mutual promises contained in this Deed, the parties agree as follows:

1. Interpretation

1.1. Definitions

- 1.1.1. In this Deed, unless the context indicates otherwise a term in bold type has the meaning shown opposite it:

Act	means the <i>Federal Court of Australia Act 1976</i> (Cth).
ATO	means the Australian Taxation Office.
Applicants	means the First Applicant, the Second Applicant, the Third Applicant, the Fourth Applicant, the Fifth Applicant and the Sixth Applicant.
Approval Order	means an order approving the settlement of the Proceeding on the terms set out in this Deed, pursuant to section 33V of the Act.
Business Day	means any day other than a Saturday, a Sunday or a public holiday in the Australian Capital Territory.
Category 1 Group Member	means a person described by that term as it is defined in the Defence to the Second Further Amended Statement of Claim, who has not opted out of the Proceeding.
Category 2 Group Member	means a person described as a Category 2A Group Member or a Category 2B Group Member, as those terms are defined in the Defence to the Second Further Amended Statement of Claim, who has not opted out of the Proceeding.
Category 3 Group Member	means a person described by that term as it is defined in the Defence to the Second Further Amended Statement of Claim, who has not opted out of the Proceeding.
Category 4 Group Member	means a person described by that term as it is defined in the Defence to the Second Further Amended Statement of Claim, who has not opted out of the Proceeding.
Claims in the Proceeding	means a claim made in the Proceedings or arising out of or in relation to the subject matter of the

	Proceeding, but does not include a claim that arises from rights under this Deed.
Court	means the Federal Court of Australia.
Declarations	means the declarations set out in Annexure A.
Deduction Amount	means the amount (if any) determined by the Court that is to be deducted from the Settlement Sum to compensate Gordon Legal for costs.
Deed	means this Settlement Deed and includes any Annexure to this Deed.
Distribution Sum	means the Settlement Sum less the Deduction Amount.
Eligible Category 3 Group Member	means a Category 3 Group Member who had monies recovered from them on the basis of a debt initially determined on apportioned ATO income information where the value of the monies recovered exceeded the value of the debt when recalculated on information not based on apportioned ATO income information.
Gordon Legal	means Gordon Legal Pty Ltd (ABN 19 624 972 836), the solicitors for the representative applicants in the Proceeding and Group Members.
Group Member	has the meaning defined in the Second Further Amended Statement of Claim, excluding those who have opted out of the Proceeding.
GST	has the meaning that it has in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
PAYG	means Pay-As-You-Go withholding amounts withheld by an employer and reported to the ATO.
Proceeding	means proceeding VID 1252 of 2019 filed in the Federal Court of Australia.
Related Persons	means past and present ministers, officers, employees, agents, professional advisors, executors, administrators or assigns of a party to this Deed.
Respondent	means the Commonwealth of Australia.
Restitution Sum	means the amount raised and recovered from a Category 2 Group Member where that amount or debt and any ensuing penalty was based on an invalid debt as described in the Declarations.
Scheme Assurer	a suitably qualified and experienced independent third party that the Respondent engages to provide assurance over the Settlement Distribution Scheme.

Scheme Claimant	means a Category 2 Group Member or an Eligible Category 3 Group Member for whom the Respondent has current bank account details at the date set out in or determined under the Settlement Distribution Scheme.
Settlement Distribution Scheme	means the scheme as set out in Annexure B.
Settlement Sum	means the amount of \$112 million.

1.2. Interpretation

1.2.1. In this Deed, unless the contrary intention appears:

- a. words importing a gender include any other gender;
- b. words in the singular include the plural and words in the plural include the singular;
- c. clause headings are for convenience reference only and have no effect in limiting or extending the language of provisions to which they refer;
- d. words importing a person include a partnership and a body whether corporate or otherwise;
- e. a reference to dollars is a reference to Australian dollars;
- f. a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;
- g. if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- h. a reference to writing is a reference to any representation of words, figures or symbols, whether or not in a visible form;
- i. a covenant on the part of two or more persons binds them jointly and severally and a covenant for the benefit of two or more persons is for the benefit of them jointly and severally;
- j. a reference to any deed, agreement, licence, document or other instrument (including this Deed) includes a reference to that deed, agreement, licence, document or other instrument as renewed, extended, novated, varied or substituted from time to time;
- k. where the day on or by which any act, matter or thing is to be done under or pursuant to this agreement is not a Business Day, the act, matter or thing must be done on the next Business Day;
- l. references to clauses are references to clauses of this Deed unless expressly stated otherwise; and

m. references to an Annexure are references to an Annexure of this Deed.

1.3. Guidance on construction of Deed

1.3.1. This Deed records the entire agreement between the parties in relation to its subject matter.

1.3.2. As far as possible all provisions of this Deed will be construed so as not to be void or otherwise unenforceable.

1.3.3. If anything in this Deed is void or otherwise unenforceable then it will be severed and the rest of the Deed remains in force.

1.3.4. A provision of this Deed will not be construed to the disadvantage of a party solely on the basis that it proposed that provision.

1.4. Commencement

1.4.1. The terms of this Deed apply on and from the date of execution of this Deed, as determined under clause 4.5.1.

2. Settlement

2.1. Payment of Settlement Sum

2.1.1. In full and final settlement of the Proceeding, the Commonwealth agrees to pay the Settlement Sum, subject to:

- a. the Approval Order being made by the Court; and
- b. the terms of this Deed.

2.2. Release of the Commonwealth

2.2.1. Subject to the Approval Order being made by the Court, the Applicants on their own behalf and on behalf of the Group Members release the Respondent and its Related Persons from all Claims in the Proceeding, other than claims that arise under this Deed (including the Settlement Distribution Scheme).

2.2.2. The release provided by the Applicants and Group Members in clause 2.2.1 does not affect in any way a Group Member's right or ability to:

- a. enquire about, object to, or challenge a debt decision of the Respondent that is not the subject of the Proceeding; and
- b. enquire about, object to, or challenge a decision of the Respondent with respect to his or her entitlement to any social security payment.

2.3. Commonwealth makes no admission of legal liability

2.3.1. This Deed, and the payment of the Settlement Sum, is not, and is not to be represented or interpreted as, an admission of liability by the Respondent or its Related Persons.

2.3.2. The Applicants and Gordon Legal acknowledge that settlement as set out in this Deed is made without any admission or concession of any legal liability whatsoever on the part of the Commonwealth.

2.4. Settlement

2.4.1. The Respondent:

- a. will do all things reasonably necessary to assist the Applicants to make application for approval of this Deed pursuant to section 33V of the Act;
- b. will not demand, raise or recover from any Category 1 Group Member or any Category 2 Group Member any invalid debt as described in the Declarations;
- c. will pay to each Category 2 Group Member:
 - i. the respective Restitution Sum or Restitution Sums of each Group Member, to the extent such payment has not already been made; and
 - ii. that Group Member's share of the Distribution Sum as determined under and in accordance with the Settlement Distribution Scheme;
- d. will pay to each Eligible Category 3 Group Member that Group Member's share of the Distribution Sum as determined under the Settlement Distribution Scheme; and
- e. will consent to the Court making the Declarations.

2.5. Approval Order

2.5.1. As soon as practicable after execution of this Deed, or as the Court may direct, the Applicants agree to apply to the Court for the Approval Order.

2.5.2. The parties agree that any application for the Approval Order will include application for orders that:

- a. all costs orders be vacated; and
- b. upon completion of the administration of the Settlement Distribution Scheme the Proceeding be dismissed with no order as to costs.

2.5.3. At the time the Applicants apply for the Approval Order pursuant to clause 2.5.1, the Applicants and Respondent will apply for consent orders that there be declarations in the form set out at Annexure A.

2.5.4. The parties will each do all things that are reasonably necessary to support the applications referred to in clauses 2.5.1 to 2.5.3.

2.6. Obligations of the parties

2.6.1. The parties will execute all documents and do all acts reasonably necessary to comply with this Deed and refrain from performing any act incompatible with this Deed.

2.6.2. Neither the Respondent, including by its Related Persons, nor Gordon Legal may convey to any Applicant or Group Member or the public that the Proceeding has been or will be dismissed by the Court prior to the completion of the Settlement Distribution Scheme, but may make statements to the effect that the matter has settled or been resolved.

2.7. Settlement Distribution Scheme

2.7.1. The parties agree to be bound by the Settlement Distribution Scheme and the Applicants do so on their own behalf and on behalf of each Group Member.

2.7.2. The Settlement Distribution Scheme will commence upon the Court making the Approval Order or such other date as the Court deems appropriate.

2.7.3. The Settlement Distribution Scheme will provide for the Distribution Sum to be distributed to Category 2 Group Members and Eligible Category 3 Group Members. The Settlement Distribution Scheme does not provide for the payment of any portion of the Distribution Sum or any other monies to be made to persons who are:

- a. Category 1 Group Members;
- b. Category 4 Group Members; or
- c. Category 3 Group Members who are not Eligible Category 3 Group Members.

2.7.4. The Respondent will at its own cost engage the Scheme Assurer and instruct the Scheme Assurer to perform all of its functions under, and in accordance with the terms of, the Settlement Distribution Scheme.

2.8. Costs

2.8.1. Each party will bear its own costs of the negotiation, preparation and execution of this Deed and the performance of any obligations under this Deed.

2.8.2. Pending Court consideration of the applications covered by clauses 2.5.1, 2.5.2 and 2.5.3, no party shall take any step to enforce any existing costs order in the Proceeding.

2.8.3. No party will seek costs of or incidental to the applications referred to in clauses 2.5.1, 2.5.2 or 2.5.3.

2.8.4. Gordon Legal may apply to the Court for an order that an amount is to be deducted from the Settlement Sum and paid to Gordon Legal in respect of:

- a. the reasonable legal costs incurred on behalf of the Representative Applicants and Group Members arising from its conduct of the Proceeding on their behalf up until the Approval Order is made (to be paid to Gordon Legal within 30 days of the application being determined by the Court); and
- b. the reasonable costs it incurs for conducting functions under the Settlement Distribution Scheme (to be paid to Gordon Legal as directed by the Court).

- 2.8.5. The Respondent reserves its position with respect to any application that is made for costs under clause 2.8.4.a or clause 2.8.4.b.
- 2.8.6. Any application to the Court by Gordon Legal under clause 2.8.4 must be made before, or at the same time, as the Approval Order is sought by the parties from the Court.
- 2.9. GST**
- 2.9.1. The parties acknowledge and rely on GSTR 2001/4 for no taxable supplies being made under this Deed and for no GST being payable in relation to it.
- 2.9.2. In the event that any payment made by the Respondent pursuant to this Deed is consideration in respect of which GST is applicable, the Respondent will increase the payment by an amount equal to the GST applicable.

3. Settlement of all claims

3.1. Acknowledgements

- 3.1.1. The parties acknowledge that the payments to be made under this Deed are in full satisfaction of any claim for loss, damage, cost or expense in relation to the Claims in the Proceeding.
- 3.1.2. Each party:
- a. acknowledges that, other than as set out in this Deed, it enters into this Deed freely and voluntarily based upon its own information, legal advice and investigation;
 - b. acknowledges that, other than set out in this Deed, it is not executing this Deed as a result of, by reason of, or in reliance on any promise, representation, advice, statement or information of any kind or nature whether in answer to any inquiry or not;
 - c. represents and warrants that this Deed is valid and binding in respect of that party;
 - d. agrees that it is not entering into this Deed in reliance on any representations made by another party (including any oral representations) which do not appear as an operative term in this Deed;
 - e. agrees that this Deed supersedes any prior agreement between the parties (including any written or verbal agreements); and
 - f. must do all things and execute all further documents necessary to give full effect to this Deed.

3.2. Bar to proceedings

3.2.1. This Deed may be pleaded in bar in any proceedings which may be commenced by or through any of the parties or the Group Members in respect of any Claims in the Proceeding.

3.3. No further steps

3.3.1. The parties will not take any further steps in the Proceeding, other than those steps that are:

- a. reasonably necessary in order to implement, facilitate, or give effect to this Deed (including the Settlement Distribution Scheme) or any Approval Order made by the Court;
- b. required by the Act, or other relevant legislation, or an order of the Court; or
- c. agreed between the parties.

4. General provisions

4.1. Confidentiality

4.1.1. No party will make any statement to the media about the fact that the matter has settled until such time as the Court has been informed on an open basis that in-principle settlement has been reached.

4.1.2. The parties will agree a joint statement to the media to be released after the Court has been informed of the in-principle agreement, which would note that the Respondent's agreement to settle the matter does not reflect any admission by the Respondent, or acceptance by the Respondent of there being any force to the allegations of knowledge of unlawfulness.

4.2. Waiver

4.2.1. A failure or delay by a party to exercise any right or remedy it holds under this Deed or at law does not operate as a waiver of that right.

4.2.2. A single or partial exercise by a party of any right or remedy it holds under this Deed or at law does not prevent the party from exercising the right again or to the extent it has not fully exercised the right.

4.3. Variation

4.3.1. A variation of this Deed is binding only if agreed in writing and signed by the parties.

4.4. Applicable law

4.4.1. This Deed is to be construed in accordance with, and any matter related to it is to be governed by, the law of the State of Victoria.

4.4.2. The parties submit to the jurisdiction of the courts of the State of Victoria.

4.5. Counterparts

4.5.1. This Deed may be signed in any number of counterparts and all such counterparts taken together will be deemed to constitute one and the same document. Execution of the Deed will be complete when the last party to sign the deed signs it and the Commonwealth holds counterparts signed by all other parties and Gordon Legal holds a counterpart signed by the Commonwealth.

4.6. Condition precedent

4.6.1. Clauses 2.2, 2.3, 2.4.1.b, 2.4.1.c, 2.4.1.d, 2.4.1.e, 2.7, 3.1.1 and 3.2 only have effect if the Approval Order is made.

4.7. Termination

4.7.1. If the Court finally declines to make the Approval Order or the Declarations (save for any consequential amendments to the Approval Order or Declarations, or otherwise where those amendments are made with the consent of the parties), this Deed will terminate and will be of no force and effect, unless then varied in writing by the parties, where they each agree that it should continue.

4.7.2. For the purposes of clause 4.7.1, the Court will 'finally decline' to make an order if any of the following occurs:

- a. the Court declines to make an order and no appeal from the decision is commenced within the time period provided for any appeal; or
- b. the Court declines to make an order and that decision is upheld on any appeal (including any subsequent appeal).

4.7.3. The Court will not be taken to have 'finally declined' to make the Approval Order or the Declarations if it invites or requires any party to the Proceedings to submit further evidence, make further submissions or provide further information regarding the Approval Order or the Declarations or if it makes orders or declarations in substantially but not identical terms to the Approval Order or Declarations.

4.8. Severance of terms

4.8.1. The parties mutually covenant and agree that if anything in this Deed, including any clause or part of a clause is void or otherwise unenforceable, then to the extent possible, it will be severed and the rest of the Deed will remain enforceable.

4.9. Notices

4.9.1. Any notice provided under this Deed must be in writing and delivered by email to the party at the address for that party as follows:

4.9.2. The Applicants, Group Members and Gordon Legal:

- i. robodebt@gordonlegal.com.au

4.9.3. The Respondent:

i. notices@ags.gov.au

- 4.9.4. A party may vary or amend its notice recipients on advance written notice to all other parties.
- 4.9.5. A notice sent by email is regarded as being given and received when a delivery confirmation report is received by the sender of the notice.

4.10. Dispute Resolution

- 4.10.1. If a dispute between any of the parties arises out of or in relation to this Deed ("**Dispute**") no party to the Dispute will start Court proceedings (except proceedings seeking interlocutory relief) unless it has complied with this clause 4.10.
- 4.10.2. A party claiming that a Dispute has arisen must notify each of the other parties, give each other party details of the Dispute and a proposal for resolution.
- 4.10.3. For a 7 day period after a notice is given by a disputing party under clause 4.10.2 the disputing party and each other party must use all reasonable endeavours to resolve the Dispute, including by way of the representatives of each party meeting to seek to resolve the Dispute.
- 4.10.4. If the Dispute remains unresolved after 7 days from the date notice is given, the Dispute must be referred to mediation to:
- a. a mediator agreed on by each of the parties, being either a suitably qualified Senior Counsel practising at the Victorian or New South Wales Bar, or a retired judge of the High Court of Australia, Federal Court of Australia or Supreme Court of an Australian State or Territory; or
 - b. if agreement is not reached on the choice of mediator after 10 days from the date notice is given, a mediator nominated by the President of the Law Institute of Victoria.
- 4.10.5. The role of the mediator is to assist in negotiating a resolution of the Dispute.
- 4.10.6. A mediator may not make a decision that is binding on a party unless the party has agreed to this in writing.
- 4.10.7. Each party will use all reasonable endeavours to resolve a Dispute through mediation, including by providing the mediator with all information relevant to the Dispute.
- 4.10.8. If the Dispute is still not resolved within 14 days of appointment of the mediator, a party that has complied with clause 4.10 may terminate the dispute resolution process set out under this clause 4.10, by giving notice to each other party.
- 4.10.9. Each party must bear its own costs of complying with clause 4.10.

Executed as a Deed

Signatures

<p>SIGNED, SEALED AND DELIVERED by Katherine Prygodicz</p> <p>DATE:</p> <p>In the presence of:</p>	<p>_____</p> <p>Signature</p> <p>_____</p> <p>Signature:</p> <p>Witness Name:</p> <p>Witness Address:</p>
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<p>SIGNED, SEALED AND DELIVERED by Elyane Porter</p> <p>DATE:</p> <p>In the presence of:</p>	<p>_____</p> <p>Signature</p> <p>_____</p> <p>Signature:</p> <p>Witness Name:</p> <p>Witness Address:</p>
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<p>SIGNED, SEALED AND DELIVERED by Steven Fritze</p> <p>DATE:</p> <p>In the presence of:</p>	<hr/> <p>Signature</p> <hr/> <p>Signature:</p> <p>Witness Name:</p> <p>Witness Address:</p>
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<p>SIGNED, SEALED AND DELIVERED by Felicity Button</p> <p>DATE:</p> <p>In the presence of:</p>	<p>Signature</p> <p>Signature:</p> <p>Witness Name:</p> <p>Witness Address:</p> <hr/>
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<p>SIGNED, SEALED AND DELIVERED by Shannon Thiel</p> <p>DATE:</p> <p>In the presence of:</p>	<hr/> <p>Signature</p> <hr/> <p>Signature:</p> <p>Witness Name:</p> <p>Witness Address:</p>
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<p>SIGNED, SEALED AND DELIVERED by Devon Collins</p> <p>DATE:</p> <p>In the presence of:</p>	<hr/> <p>Signature</p> <hr/> <p>Signature:</p> <p>Witness Name:</p> <p>Witness Address:</p>
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<p>EXECUTED as a DEED by and on behalf of Gordon Legal Pty Ltd (ABN 19 624 972 836)</p> <p>DATED the day of</p>	<hr/> <p>(Sign above the line)</p> <p><i>Director</i></p> <p>Name:</p> <hr/> <p>(Sign above the line)</p> <p><i>Director/Secretary</i></p> <p>Name:</p>
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<p>EXECUTED as a DEED by and on behalf of the Commonwealth of Australia</p> <p>DATED the day of</p> <p>In the presence of:</p>	<hr/> <p>(Sign above the line)</p> <p>Name:</p> <hr/> <p>Witness Name</p> <hr/> <p>Witness Address</p>
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Annexure A

Declarations

In respect of asserted overpayment debts raised against Representative Applicants and Group Members, the Court declares that:

1. A decision that a Representative Applicant or Group Member owed the Commonwealth a debt under s 1223 of the *Social Security Act 1991*, because the person had obtained the benefit of a social security payment to which they were not entitled, was not validly made where all of the following apply:
 - a. the rate of the social security payment for the Representative Applicant or Group Member was dependant upon the person's ordinary income on a fortnightly basis;
 - b. the Commonwealth based its decision on an assumption (**Assumption**) that the person's ordinary income for a fortnight (**relevant fortnight**) was greater than the amount of ordinary income that the person had reported to the Commonwealth for the relevant fortnight;
 - c. the Commonwealth relied solely on PAYG employment income data from the Australian Taxation Office (**ATO data**) to make the Assumption and did not have evidence that the person was likely to have earned employment income at a constant fortnightly rate during a period covered by the ATO data, or other evidence to support the Assumption;
 - d. the Assumption was based on an assessment of the person's employment income for the relevant fortnight derived from averaging the ATO data, for a longer period that included the relevant fortnight, as if the person had earned income at a constant rate during that period.

Annexure B: Framework of Settlement Distribution Scheme

1. Definitions and interpretation

- a. Any term defined in the Deed has the equivalent meaning when used in this Settlement Distribution Scheme.
- b. Where any provision of this Settlement Distribution Scheme is inconsistent with the Deed, the corresponding provision in the Deed will prevail.
- c. In this Settlement Distribution Scheme:
 - i. headings and bold type are for convenience only and do not affect the interpretation of this Settlement Distribution Scheme;
 - ii. the singular includes the plural and the plural includes the singular;
 - iii. words of any gender include all genders;
 - iv. other parts of speech and grammatical forms of a word or phrase defined in this Settlement Distribution Scheme have a corresponding meaning;
 - v. a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;
 - vi. a reference to a document includes all amendments or supplements to, or replacements or novations of, that document; and
 - vii. a reference to a clause is a reference to a clause in this Settlement Distribution Scheme unless expressly stated otherwise.

2. The Scheme Assurer

- a. The Scheme Assurer will provide assurance of the Respondent's calculation and distribution of entitlements under the Settlement Distribution Scheme to ensure the Settlement Distribution Scheme is administered fairly and reasonably in accordance with its terms.
- b. The Scheme Assurer will report to the Court, as required, on the extent to which the Settlement Distribution Scheme is or has been administered fairly and reasonably in accordance with its terms.
- c. The Scheme Assurer's duty to the Court takes priority over any obligations to individual Group Members, Gordon Legal or the Respondent.
- d. The key roles of the Scheme Assurer will include assurance:
 - i. over the categorisation of Group Members, including sampling categorisations;
 - ii. of the Respondent's ICT system design, build and release for the administration of the Settlement Distribution Scheme; and
 - iii. over the calculation of Scheme Claimants' entitlements and the Respondent's payment of such entitlements, including sampling of the calculations.

- e. The Scheme Assurer will also provide an independent review mechanism for Group Members who dispute their categorisation or entitlement calculation.
- f. The Respondent will provide the Scheme Assurer with access to all information and data it reasonably requires (including the data and information of Group Members) to allow the Scheme Assurer to perform its functions under the Settlement Distribution Scheme.
- g. The costs of the Scheme Assurer are to be paid by the Respondent directly and are not to be paid from the Settlement Sum. The Scheme Assurer has no contractual right, lien, charge, mortgage or legal or equitable interest over any of the Settlement Sum or any of the Deduction Amount that would permit it to be paid costs from those amounts or prevent it from paying the Distribution Sum to Scheme Claimants.

3. Settlement Distribution Scheme plan

- a. Within 30 days after the execution of the Deed, the Respondent will develop a draft plan for the Settlement Distribution Scheme implementation (**Implementation Plan**), which will provide additional detail about the Respondent's functions in the Settlement Distribution Scheme, including timeframes within which the Respondent will undertake various activities under the Settlement Distribution Scheme. The Implementation Plan will not provide any further functions either for the Scheme Assurer or Gordon Legal.
- b. The Respondent will provide a copy of the draft Implementation Plan to Gordon Legal and the Scheme Assurer for their comment. The Respondent will have regard to any comment from Gordon Legal and the Scheme Assurer in finalising the Implementation Plan.
- c. If Gordon Legal considers any part of the final Implementation Plan does not meet the requirements for the Settlement Distribution Scheme, Gordon Legal may raise such concerns with the Respondent. If, within 7 days after raising its concerns with the Respondent, Gordon Legal considers that the Respondent has not adequately addressed any concerns raised under this clause 3.c, Gordon Legal may refer its concerns to Mr Paul Santamaria QC for mediation.

4. Settlement Distribution Scheme requirements

- a. Categorisation of Group Members
 - i. The Respondent will determine the categorisation of Group Members into members who are entitled to a distribution under the Deed (including the Settlement Distribution Scheme) and members who are not entitled to a distribution under the Settlement Distribution Scheme.
 - ii. The Respondent will provide the Scheme Assurer with a randomly selected statistically significant sample with respect to the categorisation of the Group Members, selected using a methodology nominated by the Scheme Assurer, to enable the Scheme Assurer to assess whether and the extent to which the Respondent has properly categorised Group Members (**Verification Process**).

- iii. The Scheme Assurer will provide a written report to the Respondent and Gordon Legal providing full details of the Verification Process, a full analysis of the results of the sample and the results, its assessment of the adequacy of that process and any further steps it considers need to be taken to remedy any errors identified in the process (**Verification Process Report**).
- iv. After receiving the Verification Process Report, Gordon Legal will advise the Respondent as to whether it is satisfied or not that Group Members have been correctly categorised. Gordon Legal and the Respondent will use all reasonable endeavours to agree on the categorisation of Group Members, and may seek input from the Scheme Assurer about the categorisation. If the Respondent and Gordon Legal cannot agree on the categorisation of Group Members, the dispute will be determined in accordance with the dispute resolution of provisions of the Deed.

b. Tracing and reminders to Group Members

The Respondent will use all reasonable endeavours to contact and verify the contact and current bank account details of each of the Category 2 Group Members and Eligible Category 3 Group Members during a period to be set out in the Implementation Plan.

The Respondent will provide information to Gordon Legal and the Scheme Assurer with all reasonable information it requests in order for Gordon Legal to be satisfied that the Respondent has used all reasonable endeavours to fulfil its obligations under this clause 4.b.

c. Assessment and Notification of Entitlements

The Respondent will undertake the assessment of entitlement to the Settlement Distribution Scheme on the following basis:

- i. The Implementation Plan will specify a date by which the Respondent must have Category 2 Group Members and Eligible Category 3 Group Members current bank account details for them to be Scheme Claimants and eligible to receive an entitlement to the Distribution Sum.
- ii. For the purposes of becoming a Scheme Claimant, the Respondent will be considered to have current bank account details of a Category 2 Group Member or Eligible Category 3 Group Member if the Respondent holds bank account details for the person and the bank account:
 - 1. is the bank account that a Group Member currently receives a social security payment into at the Claims Deadline;
 - 2. was nominated by a Category 2 Group Member for the purposes of receiving a refund following the Government's 29 May 2020 announcement; or
 - 3. was nominated by a Category 2 Group Member or Eligible Category 3 Group Member in response to a notification from the Respondent.

- iii. The calculation of each Scheme Claimant's individual entitlement to the Distribution Sum will be by reference to simple interest notionally accrued:
 - 1. for Category 2 Group Members, by reference to the amount of money they repaid at the time they repaid that amount in respect of any invalid debt set out in the Declarations;
 - 2. for Eligible Category 3 Group Members, by reference to the part of the amount they repaid at the time that amount was repaid in respect of an invalid debt, and for such time prior to the subsequent recalculation of that debt, which exceeded the total value of the debt when subsequently recalculated.

The entire Distribution Sum will be allocated for payment to Category 2 Group Members and Eligible Category 3 Group Members under the calculation provisions of this sub-clause.

- d. Approach to notifications to Group Members
 - i. Prior to the distribution of the Distribution Sum, the Respondent will notify Group Members of the following matters:
 - 1. the Settlement Distribution Scheme, including the categorisation process;
 - 2. the amount of the distribution, if any, that may be provided to a Group Member;
 - 3. how payments will be calculated and paid under the Settlement Distribution Scheme; and
 - 4. the process for a Group Member to query or dispute a matter under the Settlement Distribution Scheme,using the Group Member's preferred communications channel used for notifications by the Respondent (if any) unless special circumstances exist that mean another channel is more appropriate.
 - ii. Notifications and correspondence under the Settlement Distribution Scheme will be subject to user testing and Gordon Legal's agreement, and in default of agreement any disputes will be determined by Mr Paul Santamaria Q.C.

- e. Web Portal and Help Line

The Respondent will:

- i. establish a web portal and specialist telephone help desk for use by Group Members to answer any questions Group Members may have regarding the Settlement Distribution Scheme, including their categorisation and the calculation of any entitlement to a Distribution Sum; and
- ii. obtain Gordon Legal's input into the website text and call scripts to be used in providing these services.

f. Dispute Resolution

- i. The Respondent will ensure Group Members are able to query or dispute their categorisation or entitlement to payments. This will involve:
 1. a Group Member accessing the web portal or help line;
 2. if the Group Member is unable to resolve his or her dispute using the web portal or help line, the Group Member raising his or her dispute with the Scheme Assurer by a date specified in the Implementation Plan;
 3. the Scheme Assurer considering and making an independent determination on each request for review received before the date specified in the Implementation Plan, having regard to:
 - a. the individual's file held on the Respondent's systems;
 - b. any additional information provided by the individual for the purposes of the review;
 - c. any information provided by the Respondent about the basis and rationale for the individual's categorisation; and
 - d. any information available to the Scheme Assurer about the categorisation process generally.
- ii. Any disputes between Gordon Legal and the Respondent in respect of the Settlement Distribution Scheme will be determined under the dispute resolution provisions in clause 4.10 of the Deed.

g. Payments

All distributions under the Settlement Distribution Scheme are to be completed by no later than 12 months after the date of the Approval Order. Once all distributions are completed the Scheme Assurer is to report to the Court to confirm that has occurred.

5. Provision of information and assistance to Group Members

- a. Gordon Legal will perform the limited role of providing, to those Group Members who request it, information and assistance about the Settlement Distribution Scheme. The scope of the information and assistance will be limited to:
 - i. advice explaining how Group Members have been categorised under the Settlement Distribution Scheme; and
 - ii. explaining the methodology employed to calculate Group Members' entitlements.
- b. The information and assistance will be provided by Gordon Legal after the Notifications to Group Members occur under clause 4.d.

- c. Additionally:
- i. Any information and assistance must only be provided to Group Members.
 - ii. Any information and assistance is only to be provided within the period of 30 days after:
 1. a Group Member not receiving a payment is notified of that fact; or
 2. a Group Member receiving a distribution receives that distribution.
 - iii. Gordon Legal must have a detailed FAQ on their website to address issues and provide generic information to Group Members.
 - iv. An Interactive Voice Response message must be included on Gordon Legal's phone line to state that the Group Members are to contact Services Australia for purely factual enquiries and check Gordon Legal's FAQ first, before requesting additional information and assistance from Gordon Legal.