

## NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 17/09/2020 4:35:41 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

### Details of Filing

Document Lodged: 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: 17/09/2020 4:35:44 PM AEST

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

Registrar

### Important Information

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

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



Form 17

Rule 8.05(1)(a)

**Second Further Amended Statement of Claim**

No. VID1252 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,

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[Form approved 01/08/2011]

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.

2A. There are sub-groups of Group Members as described in paragraph 41A below.

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~~ late April 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.

**8A. The Robodebt notification in respect of the First Applicant was generated and sent based upon calculations or other outputs of the Robodebt System.**

- 9. The First Applicant's Asserted Overpayment Debt was an asserted debt that was partly or wholly 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.

14A. The Robodebt notification in respect of the Second Applicant was generated and sent based upon calculations or other outputs of the Robodebt System.

15. The Second Applicant's Asserted Overpayment Debt was partly or wholly 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.

20A. The Robodebt notification in respect of the Third Applicant was generated and sent based upon calculations or other outputs of the Robodebt System.

21. The Third Applicant's Asserted Overpayment Debt was wholly or partly 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 (the **Second Debt Period**), 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.

26A. The Robodebt notification in respect of the Fourth Applicant was generated and sent based upon calculations or other outputs of the Robodebt System.

27. The Fourth Applicant's Asserted Overpayment Debt was wholly or partly 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.

32A. The Robodebt notification in respect of the Fifth Applicant was generated and sent based upon calculations or other outputs of the Robodebt System.

33. The Fifth Applicant's Asserted Overpayment Debt was wholly or partly 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.

#### **GA. THE SIXTH APPLICANT'S ASSERTED OVERPAYMENT DEBT**

36A. The Sixth Applicant was the recipient of Social Security Payments (Youth Allowance) from 20 February 2012 to 30 May 2014.

36B. On about ~~30 February 2019~~ 7 February 2018, the Commonwealth generated a Robodebt notification in respect of the Sixth Applicant in which it asserted that there had been an overpayment of Newstart Youth Allowance to the Sixth Applicant which was recoverable by the Commonwealth as a debt (Sixth Applicant's Asserted Overpayment Debt).

#### **PARTICULARS**

The assertion was made in a letter from Centrelink to the Sixth Applicant dated 7 February 2018 entitled 'Employment income confirmation'.

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

36C. The Robodebt notification in respect of the Sixth Applicant was generated and sent based upon calculations or other outputs of the Robodebt System.

36D. The Sixth Applicant's Asserted Overpayment Debt was wholly or partly a Robodebt-raised debt.

36E. From about 19 July 2018, the Commonwealth requested or demanded from the Sixth Applicant repayment of the Sixth 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 Sixth Applicant dated 19 July 2018 titled 'Employment income review outcome'.
- (b) The demand was in the amount of \$4,815.68.
- (c) A copy of the demand letter is in the possession of the solicitors for the Applicants and may be inspected by appointment.
- (d) Centrelink records with respect to the debt amount are in possession of the solicitors for the Applicants and may be inspected by appointment.

36F. The Sixth Applicant's Asserted Overpayment Debt and associated penalty has not been paid by or on behalf of the Sixth 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 Sixth Applicant's Asserted Overpayment Debt and associated penalty.

**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.

38A. Each Robodebt notification in respect of each Group Member was generated and sent based upon calculations or other outputs of the Robodebt System.

39. ~~Each~~The Asserted Overpayment Debts in respect of each Group Member ~~was~~ ~~were~~ partly or wholly a Robodebt-raised debt, or, to the extent that it was not a Robodebt-raised debt, was nevertheless determined and asserted based upon income information provided by or on behalf of the Group Member in response to a Robodebt notification.

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.

41A. Each Applicant and Group Member falls into one or more of the following sub-groups (with some Group Members having multiple Asserted Overpayment Debts and falling into more than one sub-group):

- (a) Group Members and the Sixth Applicant each of whom have an Asserted Overpayment Debt that was partly or wholly a Robodebt-raised debt, no part of which Asserted Overpayment Debt has been received or recovered by the Commonwealth (**Category 1 Group Members**):
- (b) Group Members and the Second Applicant each of whom have an Asserted Overpayment Debt part or all of which has been received or recovered by the Commonwealth and which was:
  - (i) wholly a Robodebt-raised debt (**Category 2A Group Members**); or
  - (ii) partly a Robodebt-raised debt (**Category 2B Group Members**):
- (c) Group Members and the First Applicant, Third Applicant (in respect of his First Debt Period), the Fourth Applicant and the Fifth Applicant each of whom have an Asserted Overpayment Debt that was initially partly or wholly a Robodebt-raised debt, but which was later recalculated by the Commonwealth based on information provided by or on behalf of the Group Member part or all of which debt has been received or recovered by the Commonwealth (**Category 3 Group Members**):
- (d) Group Members and the Third Applicant (in respect of his Second Debt

Period) each of whom have an Asserted Overpayment Debt that was neither wholly nor partly a Robodebt-raised debt but which was nevertheless determined and asserted by the Commonwealth based upon income information provided by or on behalf of the Group Member in response to a Robodebt notification (Category 4 Group Members).

**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. Each of the Asserted Overpayment Debts in respect of each Applicant and Group Member were a Robodebt-raised debts or, to the extent that it was not a Robodebt-raised debt, was nevertheless determined and asserted based upon income information provided by or on behalf of the Applicant or Group Member in response to a Robodebt notification.
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.
- 48A. The Commonwealth had and has no statutory or other power to utilise the calculations or outputs of the Robodebt System to:
- (a) determine or assert an Asserted Overpayment Debt;
  - (b) procure or compel the provision to the Commonwealth by Group Members of income information; or
  - (c) generate or send to Group Members any Robodebt notification.
49. In the premises:
- (aa) the Commonwealth had and has no statutory power to use any income information provided by or on behalf of an Applicant or Group Member in response to a Robodebt notification to determine or assert an Asserted Overpayment Debt;
  - (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; and
  - (c) the Commonwealth acted unlawfully in:
    - (i) using calculations or other outputs of the Robodebt System to procure or compel the provision by any Applicant or Group

Member to the Commonwealth of income information and/or to generate or send to any Applicant or Group Member any Robodebt notification;

(ii) determining and asserting against any Applicant or Group Member any Asserted Overpayment Debt, or recalculation of it;

(iii) requesting or demanding repayment by any Applicant or Group Member of any Asserted Overpayment Debt, or recalculation of it; and/or

(iv) recovering from any Applicant or Group Member and retaining any Asserted Overpayment Debt, or recalculation of it.

## 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 officii*, 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.

62A. 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 and/or ability 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; and
- (g) the recipients of Social Security Payments (including the Applicants and Group Members) included many persons with specific disabilities, disadvantages and characteristics that rendered them particularly vulnerable in dealing with their own personal and/or financial affairs and in dealing with the Commonwealth, including those who had one or more of the "vulnerability indicators" recognised by the Commonwealth.

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;
- (ff) the matters pleaded in paragraph 49 above;
- (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.

70A. Further to paragraph 70, from 1 July 2015 the following matters were known to the Commonwealth:

- (a) the Commonwealth-controlled functions were exercised or discharged under colore officii and in such exercise and discharge the Commonwealth occupied a position of power and authority over the Applicants and Group Members;

#### **PARTICULARS**

The Commonwealth knew of these matters because it:

- i. had the ability to exercise coercive powers of enforcement and penalisation in respect of recovery of any Asserted Overpayment Debt 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; and
  - ii. formulated policies concerning the exercise of these powers: for example CTH.0004.0001.8993 for penalties; CTH.0004.0001.6544 for garnishee orders; CTH.0004.0002.2315 for departure prohibition orders.
- (b) the Applicants and Group Members were, by definition, persons who had been and may still be financially vulnerable in that they had 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;

### **PARTICULARS**

The Commonwealth knew of these matters because it was responsible for administering, and did administer, the social security law, which contained criteria that a recipient of any Social Security Payment have a low income, being an income set by the relevant income test for the particular Social Security Payment paid to that recipient under Chapter 3 of the SSA.

- (c) the recipients of Social Security Payments (including the Applicants and Group Members) included many persons with specific disabilities, disadvantages and characteristics that rendered them particularly vulnerable in dealing with their own personal and/or financial affairs and in dealing with the Commonwealth, including those who had one or more of the “vulnerability indicators” recognised by the Commonwealth;

### **PARTICULARS**

- i. The Commonwealth knew that all recipients of Social Security Payments had specific disabilities, disadvantages and characteristics because it was responsible for administering, and did administer, the social security law, which contained criteria that a recipient have such a disability, disadvantage or characteristic. Such disability, disadvantage or characteristic was:
- a. in relation to a recipient of Newstart Allowance, that the recipient satisfy the qualification pursuant to s 593 of the SSA that:
    - i. throughout the period the person is unemployed; or
    - ii. the person is a CDEP Scheme participant in respect of the period; or
    - iii. the person is incapacitated for work or study throughout the period because of sickness or an accident;
  - b. in relation to a recipient of Youth Allowance, that the recipient satisfy the qualification pursuant to s 540 of the SSA that:
    - i. either of the following applies:
      - 1. throughout the period the person satisfies the activity test or is not

- required to satisfy the activity test;
2. the person is a CDEP Scheme participant in respect of the period; and
- ii. throughout the period the person is of youth allowance age;
- c. in relation to a recipient of the Disability Support Pension, that the recipient satisfy the qualification pursuant to s 94 of the SSA, that:
- i. the person has a physical, intellectual or psychiatric impairment; and
- ii. one of the following applies:
1. the person has a continuing inability to work;
2. the Secretary is satisfied that the person is participating in the program administered by the Commonwealth known as the supported wage system;
- d. in relation to a recipient of the Age Pension, that the recipient satisfy the qualification that pursuant to s 43 of the SSA, the person was of pension age;
- e. in relation to a recipient of Carer Payment, that the recipient satisfy the qualification that the person be providing care or constant care for a person with a disability or condition referred to in s 197A of the SSA;
- f. in relation to a recipient of Partner Allowance, that the recipient satisfy the qualification pursuant to s 771HA of the SSA that:
- i. the person's partner is receiving:
1. youth allowance, austudy payment, newstart allowance, sickness allowance, special benefit, age pension, disability support pension, mature age allowance, service pension, income support supplement or veteran payment; or
2. assistance under a Student Financial Supplement Scheme or an income tested living allowance under an Aboriginal study assistance scheme; and
- ii. the person was born on or before 1 July 1955; and

- iii. the person does not have recent workforce experience.
    - g. in relation to a recipient of Sickness Allowance, that the recipient satisfy the qualification that pursuant to s 666 of the SSA, the person is incapacitated for work or study throughout the period because of sickness or an accident;
    - h. in relation to a recipient of Special Benefit, that the recipient satisfy the qualification that pursuant to s 729 of the SSA, the Secretary is satisfied that the person is unable to earn a sufficient livelihood for the person and the person's dependants (if any) because of age, physical or mental disability or domestic circumstances or for any other reason;
    - i. in relation to a recipient of Widow A Allowance, that the recipient satisfy the qualification that pursuant to s 408BA of the SSA, she satisfies the Secretary that she has no recent workforce experience on the day when she makes her claim for the allowance;
    - j. in relation to a recipient of Widow B Pension, that the recipient satisfy the qualification that she be of the age prescribed in s 362 of the SSA;
    - k. in relation to a recipient of any Social Security Payment, that the recipient satisfy the qualification that the person was paid because the person had a low income, being an income set by the relevant income test for the particular Social Security Payment paid to that recipient under Chapter 3 of the SSA.
  - ii. The Commonwealth knew that particular recipients of Social Security Payments had specific disabilities, disadvantages and characteristics, being those recipients in respect of whom it applied what it referred to as a 'vulnerability indicator' [CTH.1000.0008.9227].
- (d) 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;

### **PARTICULARS**

- i. The knowledge may be inferred from the eligibility criteria referred to in the particulars to paragraph (c) above.



- ii. Further, the Commonwealth knew that financial loss and hardship may result from the recovery of any part of an Asserted Overpayment Debt because:
  - a. it acknowledged, in a policy document in force by no later than 8 September 2014 that 'all adverse decisions may impact on a customer' [CTH.0008.0003.4993];
  - b. it operated a policy in force by no later than 2 January 2015 that required a person's financial circumstances be considered when enforcing a debt, and that where a 'customer ... insist on making higher payments, despite evidence they may not be able to afford them, accept the amount they offer' [CTH.0008.0003.1342];
  - c. it operated a policy in force by no later than 26 August 2019 which provided that people 'can ask us to pause debt recovery in a range of circumstances, including where they are experiencing financial hardship' [CTH.2008.0017.7025 at .7028, CTH.2001.0015.4300].
- (e) 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;
- (f) the fortnightly income assumption was therefore false;

**PARTICULARS TO (e) and (f)**

- i. The Commonwealth knew that the notional fortnightly income was not the actual fortnightly income because:
  - a. it calculated the notional fortnightly income by taking the income of a longer period and calculating an average from that longer period, and it was arithmetically inherent that such averaging calculated from a longer period would not yield the actual income of a shorter period;
  - b. by no later than 1 February 2015, the Commonwealth acknowledged this arithmetical inherence in an operational blueprint which was then in force [CTH.0004.0001.1916].
- ii. Further, the Commonwealth knew that the notional fortnightly income was not the actual fortnightly income because the following officers of the Commonwealth knew the matters set out below, and their knowledge pleaded below is the knowledge of the Commonwealth by reason of the positions held by those persons:
  - a. on 26 May 2016, Annette Musolino, Chief Counsel, Legal Services Division, along with

other senior officers of the Commonwealth, was present at a meeting with the Commonwealth Ombudsman in which the Ombudsman raised, in relation to the Online Compliance Intervention system, 'the common practice of employers default reporting for the period June to July when the employer has been employed for a shorter period' [CTH.1000.0006.7305 at .7307];

- b. by no later than around 2 January 2017, the Minister for Human Services, the Hon Alan Tudge MP, knew that a percentage of Robodebt notifications had been sent which were described by his Acting Chief of Staff as 'errors on our part' [CTH.0009.0001.0193 at .0194];
- c. by on or around 2 January 2017, Minister Tudge was told that 'some employers automatically report employees' income as being earned over the full financial year, even if the income was earned for only part of the financial year' [CTH.0009.0001.0193 at .0195];
- d. on 7 January 2017, Ms Golightly was in receipt of a Commonwealth document which stated:

  - i. 'customer ... claims Centrelink wrongly concluded he worked for the entirety of 2011';
  - ii. 'income averaged out incorrectly over 26 fortnights';
  - iii. 'income was incorrectly averaged out over 26 fortnights';
  - iv. 'Centrelink claims she didn't properly report her income for a year she didn't work';
  - v. 'debt was also calculated when he worked for part of the year and claimed Centrelink for the other';
  - vi. 'The dates they say I failed to declare I wasn't actually working';
  - vii. 'the automated system had gone back and averaged out his earnings for the year, assuming he was employed in those months';
  - viii. 'cited two periods in the past, one in 2013 and another from mid-2014 to mid-2015, when they claim he'd been working and therefore not entitled to benefits. The problem is, though, the 2013 period was before he'd ever even applied for Centrelink payments. He

wasn't actually getting benefits at that point, had never accepted Centrelink payments at that point, but Centrelink says he still owes them money for that period';

ix. 'Centrelink was incorrectly pursuing him for \$4,500 of debt based on payments received in 2010 when he was on sick leave and undergoing cancer treatment';

[CTH.2004.0008.1362, CTH.2004.0008.1744];

e. by 8 January 2017, Minister Tudge had read a news article written by Peter Martin which explained the falsity of the fortnightly income assumption [CTH.2000.0001.8109 at .8111];

f. by 8 January 2017, Malisa Golightly, Deputy Secretary, Integrity Group, had read the same article by Mr Martin.

(g) 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 (or disentitlement) of any Applicant or Group Member to Social Security Payments in any fortnight;

(h) the Social Security Payment differential was therefore not an overpayment of Social Security Payments or a debt owed to the Commonwealth;

#### **PARTICULARS TO (g) and (h)**

i. The Commonwealth knew that entitlement to Social Security Payments was based upon actual fortnightly income because it was responsible for administering, and did administer, the social security law, which set the entitlement to a Social Security Payment based upon the amount of income actually earned in the relevant fortnight, pursuant to Chapter 3 of the SSA [Commonwealth's Amended Defence par 46.6].

ii. The Commonwealth knew that the Social Security Payment differential was therefore not an overpayment of Social Security Payments or a debt owed to the Commonwealth because the following officers of the Commonwealth knew the matters set out below, and their knowledge pleaded below is the knowledge of the Commonwealth by reason of the positions held by those persons:

a. by 8 January 2017, Malisa Golightly, Deputy Secretary, Integrity Group, referred in an email to the 'fortnightly eligibility test requirement in the SS Act' but also that Robodebt-raised debts were 'automatically calculated' based on information from the Australian Taxation Office

- that was not referable to a fortnight [CTH.2000.0001.8109 at .8110];
- b. by 8 January 2017, Craig Storen, General Manager, Strategic Information, Compliance and Information Group, had been asked how many, and therefore knew that, Robodebt-raised debts had been raised 'automatically' on the basis of the fortnightly income assumption [CTH.2000.0001.8109 at .8109];
  - c. by 23 January 2017, Malisa Golightly was in receipt of a Commonwealth document which listed debts of recipients described as 'alleged' and which also described different amounts for those same recipients as 'legitimate' (**Debts Spreadsheet**) [CTH.0009.0001.0311 at .0315];
  - d. by 24 January 2017, Annette Musolino was in receipt of a version of the Debts Spreadsheet [CTH.2001.0006.3278];
  - e. by 25 January 2017, Craig Storen, General Manager, Strategic Information, Compliance and Information Group, and Ms Golightly, were in possession of Commonwealth data that showed 4,884 of 5,629 Robodebt-raised debts had 'subsequently been reassessed', resulting in a decrease to the debt [CTH.0009.0001.0323 at .0326];
  - f. on or around 1 March 2017, Minister Tudge had received a brief cleared by Ms Golightly which stated that 33% of Robodebt-raised debts 'were changed to \$0 on review/reassessment' [CTH.0009.0001.0535 at .0541];
  - g. on 15 March 2017, Ms Golightly and Ms Musolino became aware of a draft recommendation by the Ombudsman in relation to the Online Compliance Intervention system that the Commonwealth 'should ... give further consideration as to how to mitigate the risk of possible over-recovery of debts' and never sought to dispute or qualify that recommendation [CTH.2001.0005.3244, CTH.2001.0005.3245 at .3275];
  - h. by 7 April 2017, Ms Golightly and Ms Musolino either themselves agreed or were aware that the Commonwealth agreed to the Ombudsman's recommendation set out above [CTH.0009.0001.1801];
  - i. by around 24 April 2017, Minister Tudge became aware of the same recommendation and never sought to dispute or qualify it [CTH.0009.0001.1801];

- j. by 22 April 2018, Ms Musolino had become aware of criticism by Professor Terry Carney of the legality of Robodebt-raised debts [CTH.2001.0009.7055];
- k. by 18 September 2018, the Minister for Human Services and Digital Transformation, the Hon Paul Fletcher MP, was told that the Social Security Payment differential was not an overpayment because 'the basis of the ATO data collection is the Income Tax legislation and is therefore required for the financial year, not for lesser periods' [CTH.0009.0001.1104].

The Applicants otherwise refer to and repeat the particulars subjoined to subparagraphs (e) and (f).

- (i) 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;
- (j) 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;

#### **PARTICULARS TO (i) and (j)**

- i. The Commonwealth knew that an Asserted Overpayment Debt or associated penalty was not a debt due to it within the meaning of section 1222A of the SSA because:
    - a. it was responsible for administering, and did administer, the social security law, which by section 1223 of the SSA provided that a debt is owed by a person who obtains the benefit of a Social Security Payment but 'was not entitled for any reason to obtain that benefit';
    - b. however, an Asserted Overpayment Debt was not capable of being a payment to which the Applicant or Group Member 'was not entitled', by reason of the matters subjoined to subparagraphs (e) to (h).
  - ii. The Commonwealth knew that it had no statutory or other power because it was responsible for administering, and did administer, the social security law, which did not contain any provision empowering it to raise and recover or seek to recover any Asserted Overpayment Debt, or impose any penalty thereon.
- (k) the Commonwealth acted unlawfully in:
- (i) determining and asserting against any Applicant or Group Member any Asserted Overpayment Debt, or recalculation of it;

- (ii) requesting or demanding repayment by any Applicant or Group Member of any Asserted Overpayment Debt, or recalculation of it; and/or
- (iii) recovering from any Applicant or Group Member and retaining any Asserted Overpayment Debt, or recalculation of it.

### **PARTICULARS**

- i. The Commonwealth knew of these matters (including their unlawfulness) because:
  - a. it was party to Administrative Appeals Tribunal reviews in which Asserted Overpayment Debts had been set aside on the basis that the fortnightly income assumption could not lawfully support the existence of a debt, and which it elected not to appeal or have reviewed (**AAT Unlawful Debt Decisions**), including the 76 decisions of:
    - i. Member Dr King of 17 February 2017 in proceeding 2016/M102583
    - ii. Member P White of 21 February 2017 in proceeding 2017/B105503
    - iii. Member Webb of 8 March 2017 in proceeding 2016/A103546
    - iv. Member Carney of 8 March 2017 in proceeding 2016/S104681
    - v. Member Horsburgh of 15 March 2017 in proceeding 2016/S103893
    - vi. Member Treble of 24 March 2017 in proceeding 2016/M103550
    - vii. Member Treble of 24 March 2017 in proceeding 2016/M103550
    - viii. Member Pickard of 30 March 2017 in proceeding 2016/B103477
    - ix. Member J Strathearn of 4 April 2017 in proceeding 2017/A109142
    - x. Member M Baulch of 4 April 2017 in proceeding 2017/H107549
    - xi. Member Carney of 6 April 2017 in proceeding 2017/P105366
    - xii. Member Jensen of 11 April 2017 in proceeding 2016/B104819
    - xiii. Member N Campbell of 11 April 2017 in proceeding 2017/M108103
    - xiv. Member M Martellotta of 19 April 2017 in proceeding 2017/P105452
    - xv. Member J Leonard of 20 April 2017 in proceeding 2017/S106288
    - xvi. Member Carney of 20 April 2017 in proceeding 2016/S104394
    - xvii. Member J Leonard of 24 April 2017 in proceeding 2017/S105317

- xviii. Member Millar of 25 April 2017 in proceeding 2017/A105466
- xix. Member H Schuster of 27 April 2017 in proceeding 2017/S107168
- xx. Member F Hewson of 4 May 2017 in proceeding 2017/M105766
- xxi. Member P White of 8 May 2017 in proceeding 2017/B105731
- xxii. Member E Cornwell of 8 May 2017 in proceeding 2017/S107116
- xxiii. Member F Hewson of 11 May 2017 in proceeding 2017/M106187
- xxiv. Member M Horsburgh of 18 May 2017 in proceeding 2017/S105621
- xxv. Member S Letch of 22 May 2017 in proceeding 2017/S105981
- xxvi. Member E Cornwell of 23 May 2017 in proceeding 2017/S105887
- xxvii. Member Smith of 26 May 2017 in proceeding 2016/M194661
- xxviii. Member Benk of 26 May 2017 in proceeding 2016/S105081
- xxix. Member S Letch of 29 May 2017 in proceeding 2017/B106946
- xxx. Member P White of 5 June 2017 in proceeding 2017/B109918
- xxxi. Member J Longo of 6 June 2017 in proceeding 2017/H106797
- xxxii. Member E Cornwell of 7 June 2017 in proceeding 2017/A107570
- xxxiii. Member N Foster of 7 June 2017 in proceeding 2017/S107916
- xxxiv. Member R Bradley of 12 June 2017 in proceeding 2017/B106630
- xxxv. Member Webb of 15 June 2017 in proceeding 2017/A107427
- xxxvi. Member J Longo of 15 June 2017 in proceeding 2017/M107369
- xxxvii. Member Harvey of 28 June 2017 in proceeding 2017/A106746
- xxxviii. Member A Grant of 28 June 2017 in proceeding 2017/M107477
- xxxix. Member W Budiselik of 10 July 2017 in proceeding 2017/P107899
- xl. Member Halstead of 12 July 2017 in proceeding 2017/S109944
- xli. Member J Bakas of 18 July 2017 in proceeding 2017/A107867
- xlii. Member A Smith of 18 July 2017 in proceeding 2017/M109929
- xliii. Member T Hamilton-Noy of 21 July 2017 in proceeding M107426
- xliv. Member Treble of 21 July 2017 in proceeding 2017/M108123

- xliv. Member Horsburgh of 26 July 2017 in proceeding 2017/S108616
- xlvi. Member N Foster of 27 July 2017 in proceeding 2017/B108461
- xlvii. Member N Campbell of 7 August 2017 in proceeding 2017/H108271
- xlviii. Member P Jensen of 8 August 2017 in proceeding 2017/B108136
- xlix. Member Leonard of 10 August 2017 in proceeding 2017/S110085
  - i. Member J Forgan of 11 August 2017 in proceeding 2017/A110355
  - ii. Member Halstead of 16 August 2017 in proceeding 2017/S109162
  - lii. Member A Schiwy of 17 August 2017 in proceeding 2017/M110831
  - liii. Member S Letch of 21 August 2017 in proceeding 2017/B112924
  - liv. Member H Schuster of 21 August 2017 in proceeding 2017/M109470
  - lv. Member Smith of 22 August 2017 in proceeding 2017/S111844
  - lvi. Member J Nalpantidis of 22 August 2017 in proceeding 2017/M110256
  - lvii. Member Carney of 25 August 2017 in proceeding 2017/M113469
  - lviii. Member Carney of 25 August 2017 in proceeding 2017/M113469
  - lix. Member Horsburgh AM of 30 August 2017 in proceeding 2017/S111003
  - lx. Member N Campbell of 1 September 2017 in proceeding 2017/M111025
  - lxi. Member Carney of 7 September 2017 in proceeding 2017/M112147 and M112302
  - lxii. Member Carney of 7 September 2017 in proceeding 2017/M112147 and M112302 and 2017/S112884
  - lxiii. Member Campbell of 19 September 2017 in proceeding 2017/M109711
  - lxiv. Member N Foster of 11 October 2017 in proceeding 2017/H113566
  - lxv. Member M Baulch of 16 October 2017 in proceeding 2017/H113531
  - lxvi. Member F Hewson of 16 November 2017 in proceeding 2017/M115323
  - lxvii. Member Dordevic of 28 November 2017 in proceeding 2017/S115070
  - lxviii. Member Horsburgh of 5 December 2017 in proceeding 2017/S114722
  - lxix. Member T Hamilton-Noy of 28 November 2017 in proceeding 2017/M112748
  - lxx. Member Halstead of 14 February 2018 in proceeding 2017/S116516



- lxxi. [Member S Cullimore of 2 March 2018 in proceeding 2017/A117356](#)
    - lxxii. [Member Kannis of 2 March 2018 in proceeding 2018/P118203](#)
    - lxxiii. [Member Nalpantidis of 9 March 2018 in proceeding 2018/M118320](#)
    - lxxiv. [Member Amndsnen of 22 March 2018 in proceeding 2018B118942](#)
    - lxxv. [Member Carson of 15 February 2019 in proceeding 2018/130056](#)
    - lxxvi. [Member Sperling of 3 December 2019 in proceeding 2019/M142370](#)
  - b. [section 8\(f\) of the SSA provided that in administering the social security law, the Secretary was to have regard to the need to apply government policy in accordance with the law and with due regard to relevant decisions of the Tribunal, which included the AAT Unlawful Debt Decisions;](#)
  - c. [it had conducted analysis of these decisions described by Mr Storen on 5 June 2018 \[CTH.2000.0008.1516\];](#)
  - d. [on or around 27 November 2019 it consented to orders and declarations, and agreed to a statement of facts upon which these orders and declarations were made, in the Federal Court of Australia \(Davies J\) in Amato v Commonwealth of Australia VID611 of 2019;](#)
- ii. [The Commonwealth also knew of these matters \(including their unlawfulness\) because the following officers of the Commonwealth knew the matters set out below, knowledge of such persons being knowledge of the Commonwealth by reason of the positions held by those persons:](#)
  - a. [by 4 April 2018, Mr Storen had become aware of criticism by Professor Terry Carney questioning the legality of Robodebt-raised debts \[CTH.2000.0007.5561\];](#)
  - b. [by 13 April 2018, Deputy Secretaries and Ms Musolino had become aware of criticism by Professor Carney questioning the legality of Robodebt-raised debts \[CTH.2001.0009.6833\];](#)
  - c. [by 22 April 2018, Ms Musolino and Mr McNamara had become aware of further criticism by Professor Carney questioning the legality of Robodebt-raised debts \[CTH.2001.0009.7055\];](#)
  - d. [on 15 May 2018, Ms Musolino chaired a meeting with the Ombudsman in which the 'issues raised in the article by Professor Carney' were discussed' \[CTH.2001.0009.8585\];](#)

e. on 19 December 2018, Mr McNamara, Mr Storen and Ms Musolino had become aware of an article by Professor Carney in which the Robodebt system was described as 'unlawful' [CTH.2001.0012.1134, CTH.2001.0012.1135].

(l) 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;

### **PARTICULARS**

i. The Commonwealth knew of these matters because the following officers of the Commonwealth knew of the matters set out below, and their knowledge pleaded below is the knowledge of the Commonwealth by reason of the positions held by those persons:

a. on 23 December 2016, Mr Storen had read a news report which referred to recoveries affecting the 'lowest paid and most vulnerable' and causing 'stress and anxiety just before Christmas', and describing that news report as '[m]ore of the same but potentially a staff leak' [CTH.2000.0001.8009];

b. on 7 January 2017, Ms Golightly was in receipt of a Commonwealth document which referred to:

i. 'frustration and grief';

ii. 'a rude shock';

iii. 'a single mum [who does not] have a lot of money ... [being] told that you owe \$15,000 less than a month before Christmas, it was just a kick in the guts';

iv. 'her son ... who is autistic, was pursued by a debt collector for a \$3,000 Centrelink debt';

v. a 'man ... was not allowed to leave the country until it was paid';

vi. 'cried all the way through Christmas';

vii. 'having mental health issues, suicide was my first thought';

[CTH.2004.0008.1362, CTH.2004.0008.1744];

c. on or around 24 January 2017, Ms Golightly, Ms Musolino and Minister Tudge received a document which described '115 case studies in relation to people who have appeared in the media referencing Centrelink debt', the

concern, stress, anxiety and stigma of some of whom were set out in that document [CTH.2001.0006.8771, CTH.2001.0006.8773];

- d. on or around 13 July 2017, Ms Golightly, Mr Storen and Minister Tudge received an email from within the Commonwealth that stated 'a DHS recipient took their own life' following receipt of Robodebt notification [CTH.0029.0007.0098];
- e. on or around 1 August 2017, the Commonwealth's 'Escalation team' and Mr McNamara came into possession of a Commonwealth document which recorded that a person who had received a Robodebt notification mentioned 'self harm/suicide' whilst in conversation with 'Compliance Division', and also said to a social worker that he 'was angry and frustrated, and felt he was being unjustly targeted' and 'had a plan to end his life' (the persons comprising the 'Escalation team' at the time being named in that document) [CTH.0029.0007.0121, CTH.0029.0007.0122];
- f. on or around 8 August 2017, the Commonwealth's 'Escalation team' and Mr Storen came into possession of a Commonwealth document which recorded that a person who had received a Robodebt notification said that he 'was frustrated during the conversation with the compliance officer about the prospect of a debt and stated that he had previously taken his payslips in to the office as he was recovering from a brain injury at the time and struggled to declare without assistance' and that 'it was the fault of the staff that assisted him during this time and that he was already paying off a \$280k debt from his brain surgery and this would not help. The recipient was offered social worker assistance which was declined advising that he already had support and didn't want anything else to do with the Department' (the persons comprising the 'Escalation team' at the time being named in that document) [CTH.0029.0007.0187, CTH.0029.0007.0189];
- g. on 28 August 2017, the Commonwealth's 'Escalation team' came into possession of a Commonwealth document which recorded that a person who had received a Robodebt notification was at 'high risk of self-harm' (the persons comprising the 'Escalation team' at the time being named in that document) [CTH.0029.0007.0199, CTH.0029.0007.0200];

- h. on 30 August 2017, the Commonwealth's 'Escalation team' and Mr McNamara came into possession of a Commonwealth document which recorded that a person who had received a Robodebt notification was 'very emotional from the commencement of the call', requested that the recovery of her Robodebt-raised debt 'be delayed by two weeks as she is due to commence new employment', and threatened self-harm' (the persons comprising the 'Escalation team' at the time being named in that document) [CTH.0029.0007.0029, CTH.0029.0007.0030];
- i. on 6 October 2017, the Commonwealth's 'Escalation team' came into possession of a Commonwealth document which recorded that a person who had received a Robodebt notification had a conversation with a 'Compliance Officer' who recorded that the person was 'distressed' and 'commented that he would self-harm and then terminated the call' (the persons comprising the 'Escalation team' at the time being named in that document) [CTH.0029.0007.0001, CTH.0029.0007.0002];
- j. on 23 October 2017, the Commonwealth's 'Escalation team' came into possession of a Commonwealth document which recorded that a person who had received a Robodebt notification had a conversation with 'Compliance Queanbeyan' who recorded that the person was 'became quite upset and advised me that after the phone call that they would kill themselves' (the persons comprising the 'Escalation team' at the time being named in that document) [CTH.0029.0007.0074, CTH.0029.0007.0075];
- k. on 26 October 2017, the Commonwealth's 'Escalation team' came into possession of a Commonwealth document which recorded that a person who had received a Robodebt notification had a conversation with 'Customer Compliance Queanbeyan' who recorded that the person said he would 'go into the branch (Tamworth) and shoot himself' (the persons comprising the 'Escalation team' at the time being named in that document) [CTH.0029.0007.0084, CTH.0029.0007.0085];
- l. on 6 November 2017, the Commonwealth's 'Escalation team' came into possession of a Commonwealth document which recorded that a person who had received a Robodebt notification had a conversation with 'Compliance Division' who recorded that the

person 'was distressed during the conversation' and 'on multiple occasions mentioned self harm/suicide' (the persons comprising the 'Escalation team' at the time being named in that document) [CTH.0029.0007.0154, CTH.0029.0007.0155];

m. on 7 August 2018, the Commonwealth's 'Escalation team' came into possession of a Commonwealth document which recorded that a person who had received a Robodebt notification had a conversation with the 'Debt Raising Team' who recorded that the person 'expressed threats of self-harm and indicated "easier not to be around, and easier to commit suicide" (the persons comprising the 'Escalation team' at the time being named in that document) [CTH.0029.0007.0273, CTH.0029.0007.0275];

n. on 24 September 2018, the Commonwealth's 'Escalation team' came into possession of a Commonwealth document which recorded that a person who had received a Robodebt notification had a conversation with the 'Debt Recovery Team' who recorded that the person was 'distressed and threatened suicide stating he was going to 'off himself' and 'that he had recently lost his job' (the persons comprising the 'Escalation team' at the time being named in that document) [CTH.0029.0007.0208, CTH.0029.0007.0210];

o. on 6 November 2018, the Commonwealth's 'Escalation team' and Mr Storen came into possession of a Commonwealth document which recorded that a person who had received a Robodebt notification had a conversation with a 'Compliance Officer' who recorded that the person was 'going through a separation/dispute in relation to child custody and property' and 'expressed self harm during thr [sic] course of the conversation and advised that he wanted to 'put a shotgun his mouth and blow his brains out' (the persons comprising the 'Escalation team' at the time being named in that document) [CTH.0029.0007.0230, CTH.0029.0007.0231];

p. on 11 December 2018, the Commonwealth's 'Escalation team' came into possession of a Commonwealth document which recorded that a person who had received a Robodebt notification had a conversation with a 'Compliance Officer' who recorded that the person was 'extremely upset and advised that she has been suicidal in the past and was

considering self-harm again', and was asked by the 'Compliance Officer' if the person 'could pull her car over and the customer advised that she could not as she was driving to a safe house' (the persons comprising the 'Escalation team' at the time being named in that document) [CTH.0029.0007.0253, CTH.0029.0007.0254].

- ii. The Applicants otherwise refer to the particulars subjoined to paragraph 70A(c).
- (m) any recovery by the Commonwealth of an Asserted Overpayment Debt and associated penalty could cause significant financial hardship for the Applicants and Group Members.

### **PARTICULARS**

- i. The Commonwealth knew of this matter because the following officers of the Commonwealth knew of the matters set out below, and their knowledge pleaded below is the knowledge of the Commonwealth by reason of the position held by those persons:
  - a. on or around 22 December 2016, Mr Storen had cleared a Commonwealth response to a journalist who had enquired about a recovery which left the person 'without any money over Christmas' [CTH.2002.0004.8940];
  - b. by 12 April 2017, the Commonwealth had devised a strategy to recover Asserted Overpayment Debts in respect of people it knew had been affected by Cyclone Debbie, being a strategy described in a document in the possession of Ms Golightly, Ms Musolino and Minister Tudge [CTH.0009.0001.1939].
- ii. The Commonwealth knew of this matter because it had policies:
  - a. in force by no later than 6 September 2014 that there was a discretion for 'temporary write off of recovery of the debt or non-standard withholdings' in respect of Group Members who indicate that they are in financial hardship [CTH.0004.0001.0245];
  - b. in force by no later than 8 September 2014 that Group Members with certain characteristics indicating vulnerability would be afforded 'priority' reviews of debts asserted to be owed [CTH.0008.0003.4993];
  - c. pursuant to which it could 'suspend debts until at least after Christmas' [CTH.2000.0012.9642 at .9648].
- iii. The Applicants otherwise refer to the particulars subjoined to subparagraphs 70A(c) and (d).

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 and 70 to 70A 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 purportedly 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 purportedly 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 purportedly 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 purportedly 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 purportedly 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.

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

**PARTICULARS**

- (a) The Sixth Applicant has suffered the stress, anxiety and stigma associated with the request or demand for, and threatened or actual, recovery of his 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.

**M. EXEMPLARY AND AGGRAVATED DAMAGES**

80. Further, during the period in which the Commonwealth used calculations or other outputs of the Robodebt System as the basis for raising and asserting Asserted Overpayment Debts, requesting or demanding repayment of Asserted Overpayment Debts and associated penalties, and recovering or attempting to recover Asserted Overpayment Debts and associated penalties, it knew or ought to have known of the matters pleaded in paragraphs 70A.

81. In the premises, the Commonwealth's conduct in using the calculations or other outputs of the Robodebt System as the basis for:

- (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;

was unlawful, arbitrary, oppressive, outrageous, inequitable, unconscionable, in wanton disregard and/or in contumelious disregard, of the rights of the Applicants and Group Members.

82. By reason of the foregoing the Applicants claim exemplary damages with respect to their own and Group Members' claims in negligence.

83. Further, the Applicants claim exemplary damages with respect to their own and Group Members' claims in unjust enrichment and monies had and received.

#### **PARTICULARS**

The Applicants refer to and repeat the matters pleaded at paragraphs 70A, 80 and 81.

84. Further, the Applicants claim aggravated damages with respect to their own and Group Members' claims in negligence.

#### **PARTICULARS**

(a) The Applicants refer to and repeat the particulars to paragraphs 70A, 80 and 81.

(b) The Commonwealth has continued to condition the entitlement of a Group Member to the return of an amount paid in respect of an Asserted Overpayment Debt upon the review of the decision to impose that Asserted Overpayment Debt in circumstances where the Commonwealth has made public announcements published on the website of Services Australia on 29 May 2020 and 1 July 2020 to the effect that it would refund all repayments made on debts raised in whole or part using income averaging of ATO data; thus failing to act in accordance with the announcements and/or with the expectations of the Applicants and Group Members thereby created.

(c) The circumstances and manner in which the Commonwealth used its power has, and/or its actions have, caused the Applicants and the Group Members to suffer stress, anxiety, stigma, insult and/or humiliation, and have otherwise adversely affected their lives.

(d) In respect of the First Applicant:

(i) she suffered anxiety and distress associated with the Asserted Overpayment Debt which impacted on her ability to sleep, caused her to enter into a period of poor mental health, caused her to consult a medical practitioner, and caused her to take an anti-depressant medication prescribed to her by her medical practitioner at double the dose of previous anti-depressant medication she took;

(ii) she suffered humiliation and stigma when her Asserted Overpayment Debt was discussed with her partner's mother, who presumed she had a debt because she had been dishonest; and

- (iii) she suffered distress on the basis that she viewed the Asserted Overpayment Debt as akin to an accusation that she was not entitled to or was trying to take advantage of the social security system.
- (e) In respect of the Second Applicant:
- (i) she suffered anxiety and distress on the basis that her Asserted Overpayment Debt would impede her ability to manage expenses associated with contributing towards visiting her father and contributing towards his medical bills, who had recently suffered from a heart attack and was unwell;
  - (ii) she suffered anxiety and distress and was generally disturbed by the Asserted Overpayment debt which contributed to her consulting a medical practitioner, and was prescribed diazepam to assist her to manage her anxiety, and was referred to a psychologist;
  - (iii) she suffered from panic attacks and negative thoughts relating to the Alleged Overpayment Debt; and
  - (iv) she was overcome with tension, worry and anxiety whenever she thought about her Asserted Overpayment Debt or corresponded with Centrelink.
- (f) In respect of the Third Applicant:
- (i) he suffered anxiety and stress on the basis that his Asserted Overpayment Debt would prevent him from meeting his ongoing financial expenses, including his epilepsy medication and assisting his family with utility bills;
  - (ii) from the time that he became aware of his Asserted Overpayment Debt, he was anxious that his stress levels might rise to put him at risk of having an epileptic fit, having previously been advised by his doctors that if he has another epileptic fit, he may die; and
  - (iii) his life has been adversely affected due to the Asserted Overpayment Debt, including by needing to rely upon his credit card which carries with it a 20.74% interest rate, being unable to pay for repairs on his work vehicle and unable to purchase the vehicle outright, and needing to miss work to dispute his Asserted Overpayment Debt at the Centrelink offices.
- (g) In respect of the Fourth Applicant:
- (i) she suffered stress and anxiety on the basis that the Asserted Overpayment Debt exacerbated the financial pressure she was already experiencing, including regularly being in debt, behind on payments, and needing to borrow from others;
  - (ii) she suffered from stress, anxiety, stigma and humiliation on the basis that the debt collector ARL debited \$11,571.16 from her bank account as payment for her Asserted Overpayment Debt, causing her purchase of medicine for her daughter to be declined;
  - (iii) she suffered from suicidal thoughts in connection with ARL debiting \$11,571.16 from her bank account as payment for her Asserted Overpayment Debt and a period of months after that event;
  - (iv) she has felt and continues to feel fearful that Centrelink will issue further debts against her or raise the amount of the Asserted

Overpayment Debt, causing her to suffer anxiety when going about her normal life; and

(v) she does not trust that she will be treated fairly by Centrelink and as a result has avoided trying to access social security payments that she may be entitled to.

(h) In respect of the Fifth Applicant:

(i) she experienced stress when she found out that she owed the Asserted Overpayment Debt while she was on her honeymoon because she did not feel well placed to handle the situation;

(ii) she experienced embarrassment, humiliation and stigma due to the circumstances in which she told her partner about the Asserted Overpayment Debt during her honeymoon and in which her father, an accountant, found out about the Asserted Overpayment Debt; and

(iii) her life was adversely affected by needing to make purchases on her credit card as a result of her tax refund being garnisheed that she would otherwise not have made on her credit card, which carried with it a 13.24% interest rate.

Particulars in respect of the adverse effects upon the Sixth Applicant and each other Group Member will be provided following trial and determination of the Applicants' claims.

85. 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~~ ~~13 March 2020~~ ~~30 June 2020~~ 14 September 2020



Signed by James Naughton  
Lawyer for the Applicants

This second further amended pleading was prepared by:

BF Quinn

GA Costello

MW Guo

AC Roe

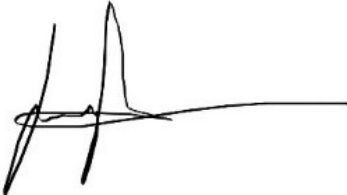
## **Annexure A**

- (a) Newstart Allowance;
- (b) Youth Allowance;
- (c) Disability Support Pension;
- (d) Austudy Allowance;
- (e) Age Pension;
- (f) Carer Allowance Payment;
- (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~~ ~~13 March 2020~~ ~~30 June 2020~~ 14 September 2020

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

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Signed by James Naughton  
Lawyer for the Applicants

## Schedule

No. VID1252 of 2019

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

Sixth Applicant: Devon Collins

**Respondent:** Commonwealth of Australia