

## NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 1/07/2020 10:31:57 AM AEST and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

### Filing and Hearing Details

Document Lodged:	Originating Application Starting a Representative Proceeding under Part IVA Federal Court of Australia Act 1976 - Form 19 - Rule 9.32
File Number:	VID1252/2019
File Title:	KATHERINE PRYGODICZ & ORS v COMMONWEALTH OF AUSTRALIA
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



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

Dated: 1/07/2020 11:12:43 AM AEST

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 Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

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.



**Amended Originating application starting a representative proceeding  
under Part IVA of the Federal Court of Australia Act 1976**

No. VID1252 of 2019

Federal Court of Australia  
District Registry: Victoria  
Division: General

**Katherine Prygodicz (and others named in the schedule)**

Applicants

**Commonwealth of Australia**

Respondent

To the Respondent

The Applicants apply for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

**Time and date for hearing:**

**Place:** Federal Court of Australia  
Owen Dixon Commonwealth Law Courts Building  
305 William Street  
Melbourne, Victoria, Australia

Date: 30 June 2020

Signed by an officer acting with the authority  
of the District Registrar

Filed on behalf of (name & role of party) Katherine Prygodicz & Ors – the Applicants  
Prepared by (name of person/lawyer) James Naughton  
Law firm (if applicable) Gordon Legal  
Tel +61 (3) 9603 3018 Fax +61 (3) 9603 3050  
Email jnaughton@gordonlegal.com.au  
**Address for service** Gordon Legal, Level 22, 181 William Street, Melbourne, VIC 3000



## Details of claim

Note: terms have the same meaning as in the Statement of Claim unless otherwise defined herein.

On the grounds stated in the accompanying Statement of Claim, the Applicants claim for themselves and the Group Members:

1. Declarations that:

(aa) the Commonwealth does not have and has not had any 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;

(ab) 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;

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

(a) the Commonwealth does not have and has not had any statutory power to ~~raise and recover or seek to recover any Robodebt raised debts or~~ impose any penalty on an Asserted Overpayment Debt ~~thereon~~;

(b) the Commonwealth was unjustly enriched by receipt of each Commonwealth recovered amount and is liable to make restitution of each Commonwealth recovered amount to the Applicants and Group Members;

(c) the Commonwealth recovered amounts are moneys had and received by the Commonwealth to the use of the Applicants and Group Members return of which they are entitled to;

(d) the Commonwealth owed and owes a duty of care to the Applicants and Group Members as alleged in the Statement of Claim;

(e) the Commonwealth breached its duty of care to the Applicants and Group



Members in the manner alleged in the Statement of Claim.

2. Restitution of all or the aggregate of Commonwealth recovered amounts and interest earned by the Commonwealth thereon.
3. Return of all or the aggregate of Commonwealth recovered amounts as money had and received by the Commonwealth to the use of the Applicants and Group Members.
4. Damages in negligence.
5. Damages in an aggregate amount pursuant to s 33Z(1)(f) of the *Federal Court of Australia Act 1976* (Cth).
6. Interest pursuant to statute.
7. Costs.
8. Such further or other order as the Court thinks fit.

#### **Questions common to claims of group members**

The questions of law or fact common to the claims of the group members are:

1. Since 1 July 2010, has the amount of any (and which) Social Security Payments to which a recipient was entitled been calculated on the basis of their reported fortnightly income?
2. Since 1 July 2015, when and in what circumstances has the Robodebt System been used by the Commonwealth to raise and recover debts?
3. Has the Robodebt System operated in the manner described in paragraph 6 of the Statement of Claim and, if not, how has it operated?
4. Are the calculations or other outputs of the Robodebt System capable of establishing, for the purposes of s 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?
5. Have any provisions 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 and, if so, what provisions?
6. Has there been any 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 s 1222A of the SSA?
7. Does the Commonwealth have, or has the Commonwealth had, any statutory or other



- power to raise and recover or seek to recover any Robodebt-raised debts or impose any penalty thereon?
8. Has the Commonwealth been enriched by, and in the amount of, each Commonwealth recovered amount at the expense of the Applicants and Group Members?
  9. Was and is the recovery by the Commonwealth of the Commonwealth recovered amounts:
    - (a) ultra vires and unlawful?
    - (b) under and by reason of a mistake?
    - (c) on a basis that failed?
    - (d) by compulsion or duress colore officii?
    - (e) by reason of the Commonwealth's negligent conduct?
  10. Was and is the enrichment of the Commonwealth by receipt of each Commonwealth recovered amount at the expense of the Applicants and Group Members unjust by reason of any (and if so, which) of the grounds referred to in the previous sub- paragraph?
  11. Are the Applicants and Group Members entitled to restitution of the Commonwealth recovered amounts?
  12. Are the Commonwealth recovered amounts money had and received by the Commonwealth to the use of the Applicants and Group Members return of which the Applicants and Group Members are entitled to by reason that:
    - (a) the recovery of the Commonwealth recovered amounts was ultra vires and unlawful?
    - (b) the payment of the Commonwealth recovered amounts was under and by reason of a mistake?
    - (c) the payment of the Commonwealth recovered amounts was on a basis that failed?
  13. Did and does the Commonwealth owe to the Applicants and Group Members a duty to take reasonable care to avoid causing them loss and damage by reason of any or all of the following:
    - (a) the exercise or discharge of the Commonwealth-controlled functions?
    - (b) the 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?



14. Did the Commonwealth breach its duty of care to the Applicants and Group Members by reason of the matters pleaded in paragraphs 66 to 72 of the Statement of Claim?
15. Are the Applicants and Group Members entitled to damages in negligence in respect of the Commonwealth's breach of duty of care and, if so, what is the proper measure or means of quantifying those damages?

### **Representative action**

The Applicant brings this application as a representative party under Part IVA of the *Federal Court of Australia Act 1976*.

The group members to whom this proceeding relates are all persons:

- (a) who at any time after 1 July 2010 received from the Commonwealth one or more payments of social security benefits of the kind set out in Annexure A to the Statement of Claim; 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, 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.

### **Applicants' address**

The Applicants' address for service is:

Place: Gordon Legal, Level 22, 181 William Street, Melbourne Victoria 3000

Email: [jnaughton@gordonlegal.com.au](mailto:jnaughton@gordonlegal.com.au)

The Applicants' address is c/- Gordon Legal Level 22, 181 William Street, Melbourne, Victoria,

3000.





**Service on the Respondent**

It is intended to serve this application on the Respondent.

Date: ~~19 November 2019~~ 30 June 2020

A handwritten signature in black ink, consisting of a stylized 'J' 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

Date: ~~19 November 2019~~ 30 June 2020