



Federal Court of Australia

District Registry: Victoria

Division: General

No: VID1252/2019

KATHERINE PRYGODICZ and others named in the schedule
Applicant

COMMONWEALTH OF AUSTRALIA
Respondent

ORDER

JUDGE: JUSTICE MURPHY

DATE OF ORDER: 19 June 2020

WHERE MADE: Melbourne

THE COURT ORDERS THAT:

Pleadings

1. By 4.00 pm on 30 June 2020, the Applicants are to file and serve any further amended statement of claim.
2. By 4.00 pm on 17 July 2020, the Respondent is to file and serve its defence to the further amended statement of claim.

Interlocutory application

3. In relation to the Applicants' interlocutory application dated 5 June 2020 (the **Application**):
 - (a) by 4.00 pm on 30 June 2020, the Respondent is to file and serve an affidavit that identifies with precision the grounds on which it contends that the documents over which privilege and/or immunity from production are claimed by the Respondent, referred to in Annexure "RC-4" of the affidavit of Rachel Clarke dated 12 May 2020 and Annexure "RC-6" of the second affidavit of Rachel Clarke dated 22 May 2020, should not be produced to the Applicants.
 - (b) By 4.00 pm on 7 July 2020, the Applicants are to file and serve any evidence on which they intend to rely.



- (c) By 4.00 pm on 21 July 2020 the parties are to file and serve written submissions.
- (d) The Application is to be heard before a Judge of the Court on a date to be fixed, no later than 30 July 2020.

Joint List of Factual and Legal Issues

- 4. By 28 August 2020 the Applicants to prepare and provide to the Respondent a list of the factual and legal issues in the matter. By 3 September 2020 the Respondent is to add any further issues to this list. The Applicants to file a joint list of factual and legal issues immediately thereafter.
- 5. By 4 September 2020 the Applicants to file a template for written submissions that has been agreed with the Respondent comprising a framework within which each party can set out its written submissions on each of the factual and legal issues identified in the list.
- 6. The template for written submissions will substantially form the framework of any opening written submissions to be made. The template will be added to and updated as evidence is heard, and likely varied as the positions taken by the parties change. In its updated and varied form, it will substantially form the framework of any closing written submissions. The Court will assume that it is only the factual and legal issues raised in the template for written submissions that it is required to consider, and that the parties do not rely on any other matter.

Other Trial Preparations

- 7. By 10 September 2020 the Applicants to file a Court Book.
- 8. By 10 September 2020 the parties to file a joint book of authorities.
- 9. By 4.00 pm on 8 September 2020, the Applicants to file their written submissions in accordance with the template.
- 10. By 4.00 pm on 15 September 2020, the Respondent to file its written submissions in accordance with the template.

Trial

- 11. Orders 20 to 28 of the orders of Justice Murphy dated 6 March 2020 are vacated.



12. The matter is listed for trial on 21 September 2020 on an estimate of three weeks.

Discovery

13. In relation to the categories of documents set out in **Annexure A**, the Respondent is to discover:

- (a) documents falling within categories 4 and 6 by 26 June 2020;
- (b) documents falling within categories 2, 3 and 5 by 8 July 2020;
- (c) documents falling within categories 1, 7 & 8 by 29 July 2020;
- (d) documents falling within category 9 by 11 August 2020.

14. The parties are by 23 June 2020 to meet and confer in the presence of National Judicial Registrar Gitsham to endeavour to agree on what further persons or positions comprising the Senior Managers of the Respondent, the subject of Category 9 of Annexure A, are likely to be relevant document custodians for the category and for the purpose of ensuring that all relevant document custodians are identified.

Other

15. The matter is listed for a further case management hearing on 13 August 2020 at 9.30 am.

16. Costs be reserved.

17. Liberty to apply.

Date that entry is stamped: 22 June 2020

Sia Lagos
Registrar



ANNEXURE A

The Respondent must provide discovery, comprising the following documents:

Category 1	All documents that describe the conduct, operation, or results of the ‘validation exercise across 1000 customers by comparing the debt outcomes of two scenarios’ referred to in document CTH.0009.0001.0163 including any advice or memoranda that refers to the outcome of that validation exercise, or any other trial, pilot or initial assessment of the Robodebt Scheme.
Category 2	All research and advice prepared by the Business Integrity Research Team’ and/or the ‘Behavioural Insights and Engagement Team’ of Services Australia (or its predecessor Department) that contains, refers or relates to the behavioural, psychological or emotional responses of welfare recipients to the methodologies or approaches adopted by the Respondent in the implementation of the Robodebt Scheme.
Category 3	All documents prepared or provided by the Legal Services Team of Services Australia (or its predecessor Department) that contains records or evidences the approach to engagement with customers of the Robodebt System.
Category 4	Any overarching or policy documents of Services Australia (or its predecessor Department) that explains why or when a Blueprint should be amended or updated.
Category 5	Internal Services Australia (or its predecessor Department) memoranda, papers, advices or notes that identify quotas or targets set by the Respondent in relation to the number of debts to be raised or processed under the Robodebt Scheme, where those documents were: <ul style="list-style-type: none"> a. Communicated to Centrelink compliance officers b. Communicated to the management of Centrelink service centres or communicated to third party debt collectors.
Category 6	All scripts to be used by Centrelink call centre officers, or the officers of third-party debt collectors when dealing with, considering or advising on welfare recipients’ Robodebt Raised Debts.
Category 7	From 1 July 2015 to date: <ul style="list-style-type: none"> a. all documents in the form of reports, or memoranda prepared by Services Australia (or its predecessor Department) that refer to welfare recipients self- harming, or suiciding as a result of their interaction with the Robodebt Scheme; b. policy documents that identify the basis on which ‘vulnerability indicators’ are applied to welfare recipient’s Centrelink file, including



	<p>the basis upon which those indicators may be 'end dated' or otherwise stopped from applying.</p>
Category 8	<p>All documents passing between Services Australia (or its predecessor Department) and the Commonwealth Ombudsman that refer or relate to the Robodebt System.</p>
Category 9	<p>Documents passing between identified Senior Managers of Services Australia (or its predecessor Department) and those Senior Managers and any Minister, during the period 1 July 2014 to 20 November 2019 (or for the period the Senior Managers held the relevant positions),</p> <p>that identifies or refers to the Respondent's knowledge (whether actual or implied) of the limitations, accuracy or reliability of the Robodebt System, in relation to:</p> <ul style="list-style-type: none">i. the Fortnightly Income Assumption; andii. the Social Security Payment Differential; andiii. the identification of and characterisation of the Social Security Payment Differential as an overpayment of Social Security Payments and a debt owed to the Commonwealth; <p>including with respect to the raising Asserted Overpayment Debts against any of the Applicants and Group Members and all internal memorandums, emails or notices directed to the Customer Compliance Division by General Manager of Customer Compliance or any other Senior Manager with respect to the same.</p> <p>The list of senior managers is to be agreed between the parties by no later than 23 June 2020.</p> <p>The process for the Respondent to conduct searches under Category 9 will be as follows. Potentially relevant document management systems, local drives and inboxes will be searched using the agreed search criteria set out below. The documents which are identified through those searches will then be subject to human review.</p> <p><u>Search Criteria for Category 9</u></p> <ul style="list-style-type: none">a. Income Comp*b. Robodebtc. Robo-debtd. Earned Incomee. Employment Incomef. PAYG review*



	g. Pay as you go review*
	h. ATO Averag*
	i. Averag* income
	j. Averag* debts
	k. Online Compliance Intervention
	l. Employment Income Conformation
	m. Check and Update Past Income
	n. OCI
	o. EIC
	p. CUPI
	q. Strengthening the Integrity of Welfare Payments
	r. Income average*
	s. Match data*
	t. Data match*
	u. ATO data
	v. Earnings apportionment
	w. Online Compliance Review*
	x. Inaccurate debt*
	y. Decreas* debt *
	z. Zero* debt
	aa. Waiv* debt
	bb. Earned Income Matching Online Compliance Intervention
	cc. Carney
	dd. Amato



	<p>ee. #notmydebt; and</p> <p>ff. Silbert.</p>
Category 10	<p>To the extent not already discovered, the advices relied on or referred to in the public comments made on 29 May 2020 by the Minister for Government Services Stuart Robert and on 31 May 2020 by the Attorney General Christian Porter in which the respective Ministers indicated, inferred or said words to the effect that the Respondent had decided to reverse its position on Robodebts because it had received advice that the use of averaging from ATO data to raise a Robodebt was lawful, and was later advised that it was unlawful, including with respect to the use of averaging from ATO data in part or whole.</p>
Category 11	<p>The risk management documents identifying the potential risks of the automated online compliance intervention referred to in the Guardian Australia article titled ‘Centrelink was warned Robodebts could be inaccurate more than four years ago’ dated 6 June 2020 in relation to:</p> <ul style="list-style-type: none">i. the Fortnightly Income Assumption; andii. the Social Security Payment Differential; andiii. the identification of and characterisation of the Social Security Payment Differential as an overpayment of Social Security Payments and a debt owed to the Commonwealth.



Schedule

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