

'ROBODEBTS'

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What is a robodebt?



Centrelink has been using an automated 'Employment Income Confirmation' system to identify possible overpayments. The system compares earnings data held by the Australian Tax Office, averaged to a fortnightly amount, with earnings that the person has reported to Centrelink.

When this automated system was set up it was used as the starting point for assessing whether a person had been overpaid and has a recoverable debt. The assessment would involve Centrelink officers comparing a person's Tax Office earnings data, averaged to a fortnightly amount, with the earnings the person notified to Centrelink over a particular period. To check the person's actual earnings over that period, Centrelink would often ask the person to provide payslips, or would contact the employer directly.

From 2015 until recently thousands of Centrelink debts were calculated solely on averaged income data provided by the Tax Office – without proper assessment of the person's actual earnings over a particular period under the applicable Social Security income test. These are known as 'robodebts'.

Many people appealed against these debts because they were certain that the Tax Office's averaging of income did not reflect their actual earnings each fortnight for the debt period. Earnings can vary from pay to pay, and for most Centrelink payments the amount a person is entitled to receive depends on earnings received in the last fortnight – not annual income.

As a result of these appeals, many robodebts were cancelled. In some cases the Administrative Appeals Tribunal found that robodebts were invalid and had no legal basis.

The robodebt 'class action'

In November 2019 the legal firm [Gordon Legal](#) lodged a class action in the Federal Court on behalf of the many thousands of people with robodebts.

A class action is when a group of people with similar claims are represented in one court action. The people in the class action are known as 'class members' and are represented by 'lead applicants'. In the robodebt class action everyone in Australia with a robodebt is part of the class action – unless they advise the Federal Court that they want to 'opt out'.

The robodebt class action in the Federal Court argues that robodebts are illegal because the automated robodebt system did not provide a valid basis for establishing legally recoverable debts. The action seeks refunds of amounts repaid; and compensation for losses.

Government announces refunds



In May 2020, in response to the Federal Court class action, the Government announced that all robodebts will be cancelled; and that all people with robodebts will be refunded the amount they have repaid. The Government says that at least 470,000 robodebts will be refunded, starting from 1 July 2020.

These refunds will be made to people with robodebts whether or not they remain part of the class action. The government says it will automatically make refunds to all eligible people.

I have received an 'opt out notice' – what does this mean?

In May 2020, at the direction of the Federal Court, Centrelink sent notices about the robodebt class action to people with robodebts. These notices included information about how to opt out of the robodebt class action.

If you received an 'opt out notice' you either have a Centrelink robodebt or you previously had one. This means that you are a member in the class action – unless you opt out. You can choose to:

- remain a class member (by doing nothing)

OR

- you can opt out by completing the opt out notice and returning it by 29 June 2020.

The Government's announcement that robodebts will be cancelled does not mean that the robodebt class action will be withdrawn. There are issues relating to whether people will be refunded amounts recovered on recalculated debts, and issues regarding compensation for people affected by robodebts.

I want to stay in the class action

If you want to remain a class member for the robodebt class action, you do not need to do anything. You do not need to respond to the opt out notice. If the class action is successful you will be entitled to a share in any benefits. You may have to satisfy certain conditions to be eligible to receive benefits.

If the class action is not successful or does not have the outcome you wanted, you will not be able to pursue the same claim, or potentially a similar or related claim, against Centrelink in another legal proceeding.

I want to opt out of the class action

If you complete and return the opt out notice by 29 June 2020, you will no longer be a member of the robodebt class action.

You will not be entitled to a share in the benefit if the class action is successful and you will not be bound by the outcome. You will be able to bring a separate claim against Centrelink if you choose to, provided you do so within the relevant time limit for claims of that type.

Where can I get more information about the class action?

You should consider getting legal advice before opting out of the class action. For more information about the class action visit the Gordon Legal website at <https://gordonlegal.com.au/robodebt-class-action>

I have a Centrelink debt – how do I know if it's a robodebt?

Here are some questions to help you work out whether your Centrelink debt could possibly be a robodebt.

1. [Did you receive an 'opt-out' letter from Centrelink?](#)

If Centrelink sent you an opt-out letter, you have a robodebt.

2. [Did you receive your debt before 2015?](#)

If you were notified of the debt before 2015, this is not a robodebt.

3. [Is your debt from Newstart, Youth Allowance, Austudy, Abstudy, Sickness or Widows Allowance, Carer Payment, Parenting Payment or the DSP?](#)

If your debt is from receiving one of these payments it could be a robodebt.

If your debt is not from receiving one of these payments, it is not a robodebt. For example, Family Tax Benefit, Child Support and Child Care Rebate debts are not robodebts.

4. [Did your debt arise because Centrelink claimed that you reported your income incorrectly?](#)

If your debt relates to income reporting it could be a robodebt.

If your debt does not relate to income reporting, it is not a robodebt. For example, a debt that relates to assessment of assets is not a robodebt.

5. [Did you provide any information about your earnings to Centrelink after receiving an 'Employment Income Confirmation' letter?](#)

If you provided documents such as bank statements or payslips to Centrelink before you were advised of your debt, your debt may not be a robodebt. However, if you were only able to provide documents for part of the period during which the debt arose, Centrelink may have used averaging for the remaining periods and created a robodebt.

I believe I have a robodebt but I didn't get an opt out notice – how can I join the class action?

For more information about the class action and registering your interest, see the Gordon Legal website - <https://gordonlegal.com.au/robodebt-class-action>

For advice about how to establish whether your debt is a robodebt, including advice about lodging a Freedom of Information request with Centrelink, contact an EJA member centre for advice - <https://ejaustralia.org.au/legal-help-centrelink/>

A Freedom of Information request for access to the Centrelink records relating to your debt can be sent via email to FOI.Legal.Team@Humanservices.gov.au

Robodebt refunds

[... if you are currently paying your debt off](#)

All people with robodebts should be refunded the amount they have repaid in full. If your debt is a robodebt, your repayments should stop and you should receive a refund of the amount you have been repaid after 1 July 2020.

[...if you previously paid your debt off](#)

If you have previously paid off a robodebt, had your tax refund withheld by the ATO to pay off a robodebt, or had your social security payments automatically deducted to pay off a robodebt, you should receive a refund of the amount you have repaid after 1 July 2020.

[...if you haven't made any repayments yet](#)

If you have a robodebt but you have not made any repayments yet, you should receive a letter explaining that it has been cancelled.

I don't think my debt is a robodebt – what can I do?

You can appeal - see our factsheet '[Centrelink Debts](#)' for further information on appealing against Centrelink debts.

Where can I get help?



You can get free legal advice about Centrelink debts and appealing from your closest member centre - <https://ejaustralia.org.au/legal-help-centrelink/>

For more information about the class action and registering your interest, see the Gordon Legal website - <https://gordonlegal.com.au/robodebt-class-action>

This factsheet does not constitute legal advice.

Please contact any of our member centres if you wish to obtain free legal advice.
Find your closest member centre at www.ejaustralia.org.au