

'ROBODEBTS'

Last updated July 2020

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 have appealed against these debts because 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 have been cancelled or reduced. In some cases the Administrative Appeals Tribunal found that robodebts are invalid and have 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 who has had a robodebt is part of the class action - unless they advised 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, interest, and compensation for distress and inconvenience.

Government announces refunds

In response to the Federal Court class action, the Government announced that all robodebts will be cancelled; and that people with robodebts will be refunded the amount they have repaid. The Government says it will automatically make refunds to all eligible people, between July and November 2020.

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.

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

Not everyone who received an opt out notice will get an automatic refund or debt cancellation notice. This is because some people who were sent opt out notices may no longer have a robodebt. They may have originally had a robodebt but it was reviewed and recalculated on the basis of fortnightly pay records rather than on automated income averaging.

Even though your robodebt may have been cancelled or you are not due a refund, you may still benefit from remaining in the class action. This is because the action seeks compensation for distress and inconvenience.

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 who have a robodebt or previously had a robodebt. The notices included information about how to opt out of the robodebt class action.

I want to stay in the class action – where can I get more information?

If you received a notice about the class action and you did not opt out, you do not need to do anything.

To receive up to date information and advice about the Robodebt Class Action register your interest with Gordon Legal - see <https://gordonlegal.com.au/robodebt-class-action>

I have a Centrelink debt but didn't get a notice about the class action – could it be a robodebt?

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

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

If Centrelink sent you an opt-out letter, your debt is either a robodebt or started as a robodebt.

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

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

[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.

[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.

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>

Can I delay appealing my debt until the class action is decided?

If you stay in the class action and the action is not successful or does not have the outcome you wanted, you will still be able to appeal against recovery of the debt. There is no time limit for appealing debts to the Centrelink Authorised Review Officer – see our appeals factsheet at <https://ejaustralia.org.au/self-help/>

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/>

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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