[Robodebt class action law firm prepared to sue for alleged ‘misfeasance in public office’](https://www.theguardian.com/australia-news/2023/jul/11/robodebt-class-action-law-firm-prepared-to-sue-for-alleged-misfeasance-in-public-office)

**Gordon Legal, which previously ran a $1.8bn class action, hopes federal government will reach out-of-court settlement offering further compensation**

The Guardian - [**Paul Karp**](https://www.theguardian.com/profile/paul-karp)*Chief political correspondent* - **Tue 11 Jul 2023**

The law firm behind [**the $1.8bn robodebt class action**](https://www.theguardian.com/australia-news/2021/jun/11/robodebt-court-approves-18bn-settlement-for-victims-of-governments-shameful-failure) says it is prepared to launch a fresh civil case alleging misfeasance in public office, potentially against former ministers and public servants, unless a settlement for further compensation is reached.

Peter Gordon, a senior partner at Gordon Legal, confirmed on Tuesday the firm had written to the Albanese government seeking to address wrongs that weren’t compensated by the original case.

The federal government services minister, Bill Shorten, warned on Monday night that former

He cited comments from the robodebt royal commission, which found that “people may have individual or collective remedies” because “on the evidence before the commission, elements of the tort of misfeasance in public office appear to exist”.

[Debt collectors face calls to return $11.6m retrieved under unlawful robodebt scheme Read more](https://www.theguardian.com/australia-news/2023/jul/11/debt-collectors-face-calls-to-return-116m-retrieved-under-unlawful-robodebt-scheme)

Despite the fact the royal commission did not recommend a compensation scheme, the Albanese government could face the invidious choice of reaching an out-of-court settlement or defending the actions of former ministers. It has [approved their legal expenses in relation to robodebt](https://www.theguardian.com/australia-news/2023/jul/07/robodebt-inquiry-coalition-legal-expenses-scott-morrison-christian-porter).

Misfeasance was argued in the original case but that element was dismissed due to a lack of evidence – but the release of the robodebt report could support a fresh claim.

Gordon told Guardian Australia the firm has already received instructions from robodebt victim clients and was “exploring a number of legal avenues” including a claim of misfeasance in public office – which is both a civil tort and a crime – “and a range of other causes of action”.

“The settlement approved was for the claim in unjust enrichment, it did no more than get the money back the government had stolen, and then provided for $110m in interest and other minor forms of damage,” he said.

“We have always said there was no opportunity on the pleaded causes of action to recover damages for pain and suffering, for other forms of loss, for example, if they lost their homes or job opportunities. There was nothing for distress and no punitive damages.”

Gordon said that “not everyone” would be entitled to sue for misfeasance or eligible for punitive damages for “egregious conduct”, particularly if they repaid debts with no great difficulty, but a “large number” would.

Gordon said a misfeasance claim could explore “coverups, sanitisation of legal advice and other reports, misrepresentations and systemic dishonesty” which prevented parties in the class action from knowing the full extent of the wrongdoing.

“A claim for misfeasance in public office would necessarily be made against both the former ministers of the crown and senior public servants … who were responsible.”

Gordon Legal, which is representing its clients on a no-win no-fee basis, has written to the government inviting them to “sit down with us and find the best way to advance this”, Gordon said.

Asked about an out-of-court settlement, Gordon said: “We believe there could be and should be. The commissioner has said it wouldn’t be an easy thing to do … but the government ought to pay for it. These were people serving in the name of the Australian government.”

Gordon praised the Albanese government for establishing the royal commission, but said it now had an opportunity “to go some way to restoring justice after one of the most egregious episodes of government wrongdoing in the country’s history”.

On Monday night, Shorten noted that a number of former Coalition ministers were the subject of adverse findings.

“I do not know why Coalition ministers with that sort of very, very damning analysis by the royal commission, why they think when the commissioner says there’s the tort of malfeasance in public office, why they think that people, victims, won’t sue them individually,” he told ABC’s 7.30.

Asked about compensation, Shorten noted the government had already raised jobseeker and promised not to “stigmatise those on welfare”, in line with the royal commission’s recommendations.

Shorten last week noted the commissioner had concluded a general compensation scheme was “not feasible” and noted “there has been some compensation” through the class action.

A Coalition source told Guardian Australia Shorten “appears to have taken any further compensation off the table” despite the fact the class action “delivered very little” for victims. “It is time for Bill Shorten to find a way forward.”

Guardian Australia does not suggest any particular ministers or public servants were named in the royal commission’s sealed section or were referred for potential civil or criminal prosecution.

The former prime minister Scott Morrison has said he “completely” rejects adverse findings, claiming they were “wrong, unsubstantiated and contradicted by clear documentary evidence presented to the commission”.

As the minister who brought the robodebt proposal to cabinet, Morrison said he had “acted in good faith and on clear and deliberate department advice that no legislation was required to introduce the scheme”.

Lawyers for former attorney general Christian Porter have said he “discharged his ministerial responsibilities acting in good faith based” on advice.

The ex-minister Alan Tudge has said he strongly rejects “the commission’s comments of the way I used the media and that I had abused my power in doing so”.

Coalition colleague Stuart Robert maintains he tried to shut down robodebt.

“As the minister that worked hard to get the legal advice and close down the income compliance scheme I welcome the [royal commission] report and its sensible recommendations,” he said on Friday.

The former department of human services secretary Kathryn Campbell has been approached for comment on the findings of the royal commission.