

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION
GROUP PROCEEDINGS LIST



No. S ECI 2023 04323

Case: S ECI 2023 04323

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B E T W E E N

PHILLIP BRENT KRAKOUER

Plaintiff

-and-

AUSTRALIAN FOOTBALL LEAGUE (ACN 004 155 211)

Defendant

STATEMENT OF CLAIM

Date of Document: 5 March 2024

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PART I - THE PARTIES

The Defendant

1. In the period 11 June 1975 to 23 January 1990, the Defendant was known as the Victorian Football League ('VFL').
2. In the period 24 January 1990 to 31 December 2022, the Defendant was, and remains, known as the Australian Football League ('AFL'), (the VFL and AFL collectively, '**the AFL**').
3. From 11 June 1975, the AFL has been, and remains, a corporate entity limited by guarantee, including under the *Corporations Act 2001* (Cth).

4. As a corporate entity, the AFL is capable of being sued in this proceeding in its own name.
5. In the period 11 June 1975 to 31 December 2022 (**'the period'**), the AFL:
 - (a) operated under a memorandum of association and articles of association, or a written constitution, as amended from time to time (collectively, **'the constitution'**);
 - (b) was governed by a board of Commissioners of the AFL;
 - (c) conducted a national professional elite Australian football competition under the constitution, commonly known as:
 - i. the 'Victorian Football League' or the 'VFL Competition' in the period 11 June 1975 to 23 January 1990; and
 - ii. from 24 January 1990 to 31 December 2022, the 'Australian Football League' or the 'AFL Competition',
(**'the AFL Competition'**);
 - (d) granted licences to Clubs, also known as AFL Clubs, as listed in paragraph 5(f) of the Endorsement to Claim, to field teams to compete in the AFL Competition (**'the Clubs'**);
 - (e) under the said licences, determined the terms and conditions upon which the Clubs may participate in the AFL Competition;
 - (f) determined the terms and conditions upon which males may participate as professional players in the AFL Competition (**'the players'**);
 - (g) determined the terms and conditions upon which football matches may be played between Clubs in the AFL Competition (**'matches'**);
 - (h) pursuant to the constitution, determined and administered:
 - i. rules;
 - ii. the 'laws of the game';
 - iii. regulations; and
 - iv. by-laws,of, and in connection with, the operation of the AFL Competition, those rules being binding on players and Clubs taking part in the AFL Competition (**'the rules'**);
 - (i) pursuant to the constitution, had the power to enforce the rules, and to impose sanctions for breach of the rules, including by:
 - i. imposing bans on the Clubs and/or the players from playing in the AFL Competition;
 - ii. suspending Clubs and/or players from playing in the AFL Competition,
 - iii. reprimanding Clubs and/or players;
 - iv. issuing fines or penalties to Clubs and/or players,

- (**'the sanctions'**);
- (j) determined the terms and conditions upon which spectators of matches (**'spectators'**) would be permitted to attend, and to watch, matches (**'the spectator terms and conditions'**);
 - (k) had the power to remove, suspend and ban spectators from matches for breaches of the spectator terms and conditions (**'the spectator sanctions'**); and
 - (l) had the power to make and enforce rules with respect to the management of umpires and match officials who were appointed by it to officiate matches (**'the umpires'** and **'the match officials'**), including the power to direct them to:
 - i. reprimand players and/or Clubs for breaches of the rules during matches;
 - ii. remove players from matches;
 - iii. reprimand spectators for breaches of the spectator terms and conditions; and
 - iv. remove spectators from matches.

The Plaintiff

- 6. The Plaintiff (**'Krakouer'**) was born on 15 January 1960.
- 7. Krakouer is a Noongar man of the Minang mob.
- 8. In the period from in or about 1980 to in or about 1992, Krakouer was registered with the AFL to play in the AFL Competition.
- 9. In the period from in or about 1982 to in or about 1989, Krakouer was listed with the North Melbourne Football Club (**'the NMF Club period'**).
- 10. In the NMF Club period, Krakouer played 141 matches for the NMF Club.

The group members

- 11. Krakouer brings this proceeding in his own right and as a representative party under Part 4A of the *Supreme Court Act 1986* (Vic).
- 12. In so far as the claim is brought as a representative proceeding, Krakouer brings this proceeding on behalf of all persons who:
 - (a) played in the AFL Competition during the period (**'the abused players'**); and

- (b) are:
- i. Aboriginal persons, meaning persons who are a descendant of an indigenous inhabitant of Australia; or
 - ii. Torres Strait Islander persons, meaning persons who are a descendant of an indigenous inhabitant of the Torres Strait Islands; or
 - iii. persons of colour, meaning people who are not white; and
- (c) who experienced racism, racial vilification, racial discrimination, racial abuse, victimisation based on race, harassment on the basis of race, humiliation on the basis of race, racist violence, race-related booing and/or spitting (**'abuse'**) while participating in the AFL Competition (**'the abuse'**).
13. Further, Krakouer brings this proceeding on behalf of persons who:
- (a) were and/or are in a close relationship with those persons set out in the preceding paragraph (**'the primary victims'**), including within the meaning of section 73 of the *Wrongs Act 1958* (Vic) (**'Wrongs Act'**); and
 - (b) have suffered pure mental harm by way of a recognised psychiatric illness because of the injury suffered by the primary victims (**'the secondary victims'**).
14. Each of the persons identified in paragraphs 12 and 13 above is a group member within the meaning of section 33A of the *Supreme Court Act 1986* (Vic) (**'the group members'**).
15. In accordance with section 33C of the *Supreme Court Act 1986* (Vic):
- (a) there are seven or more group members who have claims against the AFL;
 - (b) the claims of all the group members are in respect of, or arise out of, the same, similar or related circumstances; and
 - (c) the claims of the group members give rise to a substantial common question, or questions, of law and/or fact as set out herein.

PART II – DUTY OF CARE

Foreseeability and nature of the harm

16. During the period, it was reasonably foreseeable to a person in the position of the AFL that:
- (a) there was a risk that the abused players would be victims of abuse during matches, or in connection with matches, from:

- i. players of the Club against whom the abused players were playing (**'the opposition Club players'**);
 - ii. members of staff of the opposition Club, including coaches and Club officials (**'the opposition Club staff'**); and
 - iii. spectators.
 - (b) there was a risk that the abused players would be victims of abuse during matches, or in connection with matches, in the event that the umpires and the match officials did not prevent and/or manage the abuse;
 - (c) there was a risk that the abused players would be victims of abuse during matches, or in connection with matches, in the event that the AFL did not impose the sanctions on players and/or Clubs who committed the abuse;
 - (d) there was a risk that the abused players would be victims of abuse during matches, or in connection with matches, in the event that the AFL did not impose the spectator sanctions on spectators who committed the abuse; and
 - (e) the risk of personal injury identified at sub-paragraphs (a) to (d) immediately above included a risk of long-term or permanent physical and/or psychiatric injury or death (**'personal injury'**) as a result of the abuse, (**'the abuse risk of harm'**).
17. In the premises of the preceding paragraph, during the period, the risk of the abused players suffering personal injury was reasonably foreseeable to a person in the position of the AFL.

Power and control by the AFL over the abuse

18. By reason of the matters set out in paragraph 5 above, in the period the AFL was able to exercise AFL Competition-wide control over the setting of rules, protocols and procedures for the prevention and management of the abuse by:
- (a) players of the opposition Club;
 - (b) members of staff of the opposition Club; and
 - (c) spectators,
- and enforcement of the same with Clubs and players.
19. Further, while participating in the AFL Competition during the period:
- (a) the players were required to comply with the rules; and
 - (b) the Clubs, including the Club's coaches and staff, were required to comply with rules.

20. Further, during the period, the AFL controlled and managed:
- (a) the spectator terms and conditions; and
 - (b) the conduct of the umpires and match officials during matches.
21. In the premises of paragraphs 16 to 20 above, during the period the AFL was able to exercise control over the risk to the abused players of suffering personal injury in matches.

Vulnerability of the abused players

22. During the period, the abused players were vulnerable to acts or omissions of the AFL in relation to the risk of personal injury from the abuse during matches or in connection with matches.

PARTICULARS

In addition to the control of the AFL set out above in paragraphs 16 to 21 above, to the knowledge of the AFL, the abused players:

- (a) were members of racial and ethnic minority groups in Australia;
- (b) comprised a small percentage of the players in the AFL Competition;
- (c) comprised minority groups who have been dispossessed, and/or marginalised, in Australian society;
- (d) comprised minority groups who have been the victims of racial abuse in Australian society; and
- (e) were at risk of being subjected to the abuse given the abuse of players Doug Nicholls and Syd Jackson before the period, as set out in Annexure A.

Further, in so far as it relates to the Aboriginal and Torres Strait Islander abused players, to the knowledge of the AFL:

- (a) until a referendum in 1967, the abused players were excluded and dehumanised in and by the *Australian Constitution* by virtue of not being counted “in reckoning the numbers of the people of the Commonwealth [of Australia]”;
- (b) the abused players were the victims of segregation from social settings in Australia, including from swimming pools, picture theatres, hotels and Returned Services Leagues Clubs until in or about the 1960s; and

- (c) the abused players were members of racial and ethnic minority groups who were subjected to policies of removal of children from their families and communities from the mid-1800s onward (stolen generations).
23. During the period, the AFL knew, or ought to have known, that the abused players were vulnerable to the abuse during matches or in connection with matches.

PARTICULARS

Krakouer refers to and repeats the particulars sub-joined to paragraph 22.

The reliance by the abused players on the AFL for protection from the abuse

24. During the period, the abused players had no personal ability to, and instead relied on the AFL in its operation of the AFL Competition to:
- (a) have and enforce rules, protocols and systems on the management of the abuse during and in connection with matches committed by:
 - i. the opposition Club players; and
 - ii. the opposition Club staff;
 - (b) have and enforce the sanctions on players who committed the abuse;
 - (c) have and enforce the sanctions on Clubs whose players or Club staff committed the abuse;
 - (d) have and enforce rules, protocols and systems regarding the umpiring and officiating of matches to prevent or manage abuse;
 - (e) have and enforce rules, protocols and systems on the management of the abuse during and in connection with matches committed by spectators;
 - (f) have and enforce the spectator terms and conditions;
 - (g) have and enforce the spectator sanctions if spectators engaged in the abuse; and
 - (h) provide and administer systems of dispute resolution, mediation, conciliation, apology and/or reparation that provided appropriate care and support for the abused players following instances of abuse, and did not cause further harm to them.

The assumption of responsibility by the AFL over the abused players

25. In the premises of paragraphs 5 and 16 to 24 above, in its operation of the AFL Competition, the AFL assumed responsibility for having and enforcing rules, protocols and systems:

- (a) for the management of the abuse during and in connection with matches;
- (b) for the sanctions; and
- (c) for the spectator sanctions.

The relationship between the AFL and the abused players

26. During the period, by virtue of the matters set out in paragraphs 5 and 16 to 25 above, the AFL and the abused players were in a position analogous to employer and employee.

The AFL's knowledge of the risk

27. Before 11 June 1975 and during the period, the AFL had actual knowledge, or it was reasonably foreseeable to a person in the position of the AFL that, while participating in the AFL Competition, the abused players were being abused by:
- (a) the opposition Club players;
 - (b) the opposition Club staff, including coaches and Club officials; and/or
 - (c) spectators.

PARTICULARS

In so far as it related to the players of the opposition Club, the abuse was seen and heard, or able to be seen and heard by umpires, match officials, spectators and persons watching televised coverage.

In so far as it related to staff of the opposition Club, the abuse was acknowledged and exploited by Club coaches as a tactic used by the players against the abused players.

In so far as it related to spectators, the abuse was seen and heard, or able to be seen and heard by umpires, match officials, spectators and persons watching televised coverage.

Further, the abuse received widespread media coverage.

Further particulars of the above are set out in Annexure A hereto.

Further particulars may be provided following discovery.

Duty of care owed – the abused players

28. During the period, in the premises of paragraphs 5 and 16 to 27, the AFL owed the abused players a duty to take reasonable care for their safety and to avoid exposing them to unnecessary risk of personal injury in connection with the abuse risk of harm.
29. In addition to the duty of care arising by virtue of paragraphs 5 and 16 to 27, the duty of care set out in the preceding paragraph arose during the period by reason of:
- (a) the abused players being an ascertainable and limited class of persons;
 - (b) the AFL conducting a professional sporting competition, namely the AFL Competition, which relied, in part, on the abused players participating in the AFL Competition, and thereby being exposed to the risk of personal injury to generate its operating revenue;
 - (c) as the operators of the AFL Competition, the AFL being in the best position to inform itself regarding the risk of personal injury to the abused players arising from their participation in the AFL Competition, and to make and enforce the rules to take reasonable steps to protect the abused players from the abuse; and
 - (d) the imposition of the said duty of care not undermining the coherence of the law and, to the contrary, being consistent with section 9 of the *Racial Discrimination Act 1975* (Cth), which legislation came into force on 11 June 1975.
30. In addition to the preceding two paragraphs, in the premises of paragraphs 5 and 16 to 27, during the period, the AFL had an obligation to provide the abused players with a safe system of work during and in connection with matches, analogous to the duty owed by an employer to an employee.
31. Further, and in addition to the preceding three paragraphs, by reason of the relationship between the abused players and the AFL being analogous to an employer/employee relationship, the duty of care owed by the AFL to the abused players was a personal or non-delegable duty owed by the AFL to ensure that reasonable care was taken to avoid the risk of personal injury to the abused players in connection with their participation in the AFL Competition during matches and training.

Duty of care owed – secondary victims

32. Further, in the period, the AFL ought to have foreseen that a person who was in a close relationship with the abused player, being a person of normal fortitude, might suffer a

recognised psychiatric illness if reasonable care was not taken of the abused players, including within the meaning of sections 72 and 73 of the *Wrongs Act*.

33. In the premises of paragraphs 5 and 16 to 27 above and the preceding paragraph, the AFL owed the secondary victims a duty to take reasonable care to avoid exposing the said secondary victims to a foreseeable risk of injury.

PART III – BREACH OF DUTY OF CARE

Reasonable precautions against the abuse risk of harm

The opposition Club players

34. In so far as it relates to the opposition Club players and the abuse, during the period, including by creating and enforcing relevant rules, protocols, guidelines and procedures applicable to the players ('**system**'), the AFL had available to it the following precautions against the abuse risk of harm, including within the meaning of section 48(1) of the *Wrongs Act*:

- (a) having a system that prohibited the abuse;
- (b) enforcing the sanctions for breaches of the system;
- (c) identifying abuse by way of monitoring, or requiring responsible delegates to monitor, matches for abuse;
- (d) seeing that players abided by section 9 of the *Racial Discrimination Act 1975* (Cth) that made it unlawful for a person to do any act involving a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of any human right or fundamental freedom in economic, social, cultural or any other field of public life;
- (e) assessing the risk of abuse to the abused players during or in connection with matches;
- (f) undertaking and disseminating research and data collection on the abuse;
- (g) having specific plans that addressed the abuse;
- (h) having reporting mechanisms available to the abused players to report the abuse and protect the abused players with effective monitoring after reporting the abuse;
- (i) liaising directly with the players regarding the abuse and that it will not be tolerated;
- (j) working with the abused players directly to stop the abuse;

- (k) seeing that the sanctions for breaches of the system were undertaken speedily, consistently and in public, with public denunciation of the abuse;
- (l) encouraging and working with media to provide unbiased information about and denunciation of the abuse by players on the abused players;
- (m) integrating equality and non-discrimination into the AFL's activities and promotion of the AFL Competition;
- (n) appointing outstanding athletes as AFL ambassadors for equality and non-discrimination;
- (o) requiring all players to commit formally to abstaining from abuse;
- (p) provide all players with training on how to identify, prevent and counter abuse;
- (q) studying and monitoring the effect of the abuse on the abused players, including over time;
- (r) advising, warning and educating players on the effects of the abuse risk of harm;
- (s) requiring umpires and/or match officials to stop the game in the event that a player commits abuse until that player is sanctioned.

PARTICULARS

Particulars of the reasonable precautions will be the subject of expert evidence.

The opposition Club staff

35. In so far as it relates to the opposition Club staff and the abuse, during the period, including by creating and enforcing a system, the AFL had available to it the following precautions against the abuse risk of harm, including within the meaning of section 48(1) of the *Wrongs Act*:
- (a) undertaking each of the matters set out in the preceding paragraph, including subparagraphs (a) to (s), in so far as it related to opposition Club players and opposition Club staff;
 - (b) seeing that coaches and other opposition Club staff did not use as a tactic the abuse on the abused players;
 - (c) condemning the practice of opposition Club staff using as a tactic the abuse on the abused players;
 - (d) requiring opposition Club staff to commit formally to not using as a tactic the abuse on the abused players;
 - (e) publicly condemning the practice of opposition Club staff using as a tactic the abuse on the abused players; and

- (f) liaising directly with the Clubs and Club staff directly about abuse and that it will not be tolerated.

PARTICULARS

Particulars of the reasonable precautions will be the subject of expert evidence.

Spectators

36. In so far as it relates to spectators and the abuse, during the period, including by creating and enforcing a system, the AFL had available to it the following precautions against the abuse risk of harm, including within the meaning of section 48(1) of the *Wrongs Act*:
- (a) having the spectator terms and conditions clearly prohibiting the abuse;
 - (b) seeing that each spectator was given terms and conditions that clearly prohibited the abuse, including on the tickets of entry;
 - (c) enforcing the sanctions for breaches of the system;
 - (d) implementing the spectator sanctions;
 - (e) identifying abuse by way of monitoring, or requiring responsible delegates to monitor, spectators at matches for abuse, including through CCTV monitoring and having monitors walking around areas where spectators were present;
 - (f) seeing that spectators abided by section 9 of the *Racial Discrimination Act 1975* (Cth);
 - (g) assessing the risk of abuse to the abused players by spectators during or in connection with matches;
 - (h) undertaking and disseminating research and data collection on the abuse by spectators as a means of educating the public;
 - (i) having specific plans that addressed the abuse committed by spectators;
 - (j) having reporting mechanisms available to the abused players to report the abuse by spectators and protect the abused players with effective monitoring after reporting the abuse;
 - (k) seeing that the sanctions for breaches of the system were undertaken speedily, consistently and in public, with public denunciation of the abuse;
 - (l) encouraging and working with media to provide unbiased information about and denunciation of the abuse by spectators on the abused players;
 - (m) integrating equality and non-discrimination into the AFL's activities and promotion of the AFL Competition;

- (n) appointing outstanding athletes as AFL ambassadors for equality and non-discrimination;
- (o) requiring all spectators to commit formally to abstaining from abuse;
- (p) studying and monitoring the effect of the abuse on the abused players, including over time;
- (q) advising, warning and educating spectators on the effects of the abuse risk of harm, including through media advertising;
- (r) requiring umpires and/or match officials to stop the game in the event that a spectator commits abuse until the spectator sanctions are undertaken;
- (s) having signs at matches that inform spectators that the abuse was not permitted and informing them of the sanctions for committing the abuse;
- (t) having public announcements at matches that informed spectators that the abuse was not permitted and informing them of the sanctions for committing the abuse;
- (u) if the abuse by spectators was widespread at a match, abandoning the match; and
- (v) provide education and information to other Australian rules football leagues about the abuse and the spectator sanctions for the abuse committed by spectators.

PARTICULARS

Particulars of the reasonable precautions will be the subject of expert evidence.

Support after abuse

37. In so far as it relates to the support offered to Krakouer and the abused players following the abuse, during the period, including by creating and enforcing a system, the AFL had available to it the following precautions against the abuse risk of harm, including within the meaning of section 48(1) of the *Wrongs Act*:
- (a) designing and implementing a system of provide and administer systems of dispute resolution, mediation, conciliation, apology and/or reparation (**‘dispute resolution process’**) that provided appropriate care and support for the abused players following instances of abuse;
 - (b) seeing that such dispute resolution process did not cause further harm to Krakouer and the abused players, including by:
 - i. exposing the abused players to further victimisation and/or abuse during the dispute resolution process;
 - ii. creating an expectation or assumption that any apology for the abuse, no matter how insincere, must be accepted as being in good faith; and

- iii. creating an expectation or assumption that the delivery of an apology for the abuse, no matter how insincere, would be the end of the matter, placing the onus onto Krakouer and the abused players to excuse the abuse.

The probability that harm would occur if the reasonable precautions were not taken

38. In the premises of paragraphs 34 to 36 above (collectively, '**the reasonable precautions**'), there was a real risk of harm to players if the reasonable precautions to the abuse risk of harm were not taken by the AFL, including within the meaning of section 48(2)(a) of the *Wrongs Act*.

The likely seriousness of the risk of the abuse

39. In the premises of paragraphs 34 to 36 above, while playing in the AFL Competition, the abused players were exposed to serious injury or death as a result of the abuse risk of harm, including within the meaning of section 48(2)(b) of the *Wrongs Act*.

The burden of taking precautions to avoid the abuse risk of harm

40. Any financial costs or logistical burden on the AFL in taking the reasonable precautions in the AFL competition set out in paragraphs 34 to 36 above, including within the meaning of section 48(2)(c) of the *Wrongs Act*, were not disproportionate to avoiding the abuse risk of harm, having regard to the likely effect of the reasonable precautions in reducing the probability of players:
 - (a) being the victims of the abuse by the opposition players, opposition Club staff and spectators; and
 - (b) suffering personal injury.
41. Further, any financial costs or logistical burdens on the AFL in taking the reasonable precautions were significantly outweighed by the potential or likely gravity of harm, including by way of personal injury suffered by the abused players if the reasonable precautions were not taken by the AFL and the abused players were the victims of abuse.

Social utility and the abuse risks of harm

42. During the period, there existed positive social utility, including within the meaning of section 48(2)(d) of the *Wrongs Act*, in employing the reasonable precautions as they were:
 - (a) to promote and preserve the health, safety and wellbeing of the abused players;

- (b) to promote diversity and inclusion in the Australian community and in football codes in Australia, including Australian rules football;
 - (c) to condemn abuse in the Australian community and in football codes in Australia, including Australian rules football; and
 - (d) to raise awareness in the community of the risk of injury from abuse and the vulnerability of the abused players to abuse if it occurred.
43. Further, there was no social utility in failing to employ the reasonable precautions.
44. Further, the social utility of having, and enabling members of the public to be spectators at, or watch on television, the AFL Competition in no way needed, or benefited from, occurrences of the abuse on the abused players and, on the contrary, was harmful to and caused personal injury to the abused players engaging in the AFL Competition.

Failure by the AFL to implement the reasonable precautions

45. During the period, in the AFL competition, the AFL failed to take reasonable care to implement the reasonable precautions, including by failing reasonably to create and enforce a system, so as to:
- (a) prohibit the abuse;
 - (b) enforce sanctions when the abuse occurred;
 - (c) identify abuse by way of monitoring, or requiring responsible delegates to monitor, matches for the abuse;
 - (d) see that players, Clubs and spectators abided by section 9 of the *Racial Discrimination Act 1975* (Cth);
 - (e) assess the risk of the abuse to the abused players during or in connection with matches;
 - (f) undertake and disseminate research and data collection on the abuse to educate the players, Clubs and public at large on the abuse;
 - (g) have specific plans that addressed the abuse;
 - (h) have reporting mechanisms available to the abused players to report the abuse and protect the abused players with effective monitoring after reporting the abuse;
 - (i) see that the sanctions for breaches of the system were undertaken speedily, consistently and in public, with public denunciation of the abuse;
 - (j) encourage and work with media to provide unbiased information about and denunciation of the abuse on the abused players;

- (k) integrate equality and non-discrimination into the AFL's activities and promotion of the AFL Competition;
- (l) appoint outstanding athletes as AFL ambassadors for equality and non-discrimination;
- (m) require all players and Clubs to commit formally to abstaining from abuse;
- (n) provide all players with training on how to identify, prevent and counter the abuse;
- (o) study and monitor the effect of the abuse on the abused players, including over time;
- (p) advise, warn and educate players, Clubs and spectators on the effects of the abuse risk of harm;
- (q) require umpires and/or match officials to stop the game in the event that the abuse occurred, and not to continue the match until the abuse was sanctioned and ceased;
- (r) see that coaches and other opposition Club staff not use as a tactic the abuse on the abused players;
- (s) condemn the practice of opposition Club staff using as a tactic the abuse on the abused players;
- (t) require opposition Club staff to commit formally to not using as a tactic the abuse on the abused players;
- (u) publicly condemn the practice of opposition Club staff using as a tactic the abuse on the abused players;
- (v) have the spectator terms and conditions clearly prohibit the abuse;
- (w) see that each spectator was given terms and conditions that clearly prohibited the abuse, including on the tickets of entry;
- (x) enforce the sanctions for breaches of the spectator terms and conditions;
- (y) implement the spectator sanctions;
- (z) identify abuse committed by spectators by way of monitoring, or requiring responsible delegates to monitor, spectators at matches for abuse, including through CCTV monitoring and having monitors walking around areas where spectators were present;
- (aa) have signs at matches that inform spectators that the abuse was not permitted and informing them of the sanctions for committing the abuse;
- (bb) have public announcements at matches that inform spectators that the abuse is not permitted and informing them of the sanctions for committing the abuse;
- (cc) abandon the match if the abuse by spectators was widespread or otherwise unable to be dealt with through spectator sanctions;
- (dd) provide education and information to other Australian rules football leagues about the abuse and the spectator sanctions for the abuse committed by spectators;
- (ee) promote and preserve the health, safety and wellbeing of the abused players;

- (ff) promote diversity in the Australian community and in football codes in Australia, including Australian rules football;
- (gg) condemn abuse in the Australian community and in football codes in Australia, including Australian rules football;
- (hh) raise awareness in the community of the risk of injury from abuse and the vulnerability of the abused players to abuse if it occurs;
- (ii) engage with players, Clubs and Club staff about the abuse and ways to stop and prevent it, including under the dispute resolution process;
- (jj) have the dispute resolution process,
(‘the AFL failings’).

Breach of duty to the abused players

46. As a result of the AFL failings, the AFL breached the duty of care that it owed to the abused players and was negligent.

PART IV – KRAKOUER’S CLAIM

Primary victim claims

47. During the NMF Club period, Krakouer was abused:
- (a) by players of the opposition Clubs;
 - (b) by spectators; and
 - (c) indirectly, by the opposition Club staff.

PARTICULARS

From in or about 1980, when Krakouer agreed with the AFL and the NMF Club to be listed to the AFL, newspaper articles were written about him and his family. The said articles contained racist remarks about his family from Western Australia being uncivilised/”bush Aboriginals” and walking across the Nullarbor. The AFL did not respond to the articles or support Krakouer when it knew or ought to have known about the publications given their notoriety and the harmful racist attacks on Krakouer and his family in the lead up to the NMF Club period.

From 1982, in the majority of the 141 games played for the NMF Club, Krakouer was the victim of abuse, particularly when playing away games.

Krakouer was frequently called the following terms by opposition Club players and spectators alike:

- a. “petrol sniffer”;

- b. "Abo";
- c. "black bastard";
- d. "Nigger";
- e. "black cunt"; and
- f. "you smelly black cunt".

Krakouer was also attacked physically by opposition players who attempted to goad Krakouer to respond so that he would be sanctioned himself, which frequently occurred to his brother, James Krakouer.

In about April 1982, when James Krakouer was struck by a beer can thrown at him from a spectator, a large number of spectators also abused Krakouer.

Krakouer also had beer cans thrown at him on multiple occasions throughout the NMF Club period, including in 1982, but they did not hit him.

In a game in about June 1982, player Rod Austin was physically targeting Krakouer during the match. After the match, James Krakouer and Rod Austin got into a fight because of Rod Austin physically targeting Krakouer during the match, which the media reported.

In the 1982 elimination final, multiple Essendon players were racially attacking Krakouer, saying to him things such as "you Abo" and "black smelly bastard". Terry Daniher, a team captain, frequently called Krakouer racist names during the match and the rest of the team attacked him orally and physically during play. The umpires did not respond and Krakouer was powerless to respond and risked suspension if he did so.

In the early 1980s, Krakouer was frequently the subject of abuse during matches by player Billy Duckworth, including being called an "abo", "black cunt" and "smelly".

In or about 1985 or 1986, during a match player Wayne Johnston was making constant racist comments to Krakouer, such as "petrol sniffer", "I've fucked your sisters", and "your mum is a good fuck" and abusive references to Krakouer's wife.

In about 1985, opposition players were abusing Krakouer and Krakouer responded by putting one of the opposition players in a choke, with the umpire then saying words to the effect to the opposition player, 'you deserve it'.

During the 1980s, spectators went onto the field after matches where Krakouer was abused, including through words and being spat on. Krakouer and James Krakouer needed security to assist them off the grounds.

Krakouer was routinely abused and spat on as he left the field of play by spectators.

Around five to ten years ago, former coach Kevin Sheedy admitted to Krakouer that he encouraged his players to abuse Krakouer and his brother to obtain a tactical advantage against them in matches. This occurred at a sport's night at the Nunawading Football Club.

Krakouer also refers to Annexure A in so far as it relates to him.
Further particulars may be provided following discovery.

48. From 1980 and during the NMF Club period, the AFL:
 - (a) committed the AFL failings; and
 - (b) did not take the reasonable precautions with respect to Krakouer.

PARTICULARS

Krakouer refers to and repeats the particulars sub-joined to the preceding paragraph.

49. In the premises of paragraphs 5 and 16 to 48 above, the AFL acted negligently and breached the duty of care it owed to Krakouer.
50. As a result of the AFL's negligence, the AFL caused or contributed to Krakouer suffering injury (**'the injuries'**).

PARTICULARS OF INJURY

- (a) Physical injury, including batteries by players striking and attacking him, and spectators by way of spitting on him;
 - (b) psychiatric injury;
 - (c) post-traumatic stress disorder;
 - (d) depression;
 - (e) anxiety; and
 - (f) claustrophobia.
51. If the AFL had undertaken the reasonable precautions from 1980 and during the NMF period, and did not commit the AFL failings, Krakouer would not have suffered the injuries or, alternatively, the extent of the injuries.
52. Within the meaning of section 51(1)(a) of the *Wrongs Act*, and in the premises of paragraphs 47 to 51 above, the AFL's negligence was a necessary condition of the occurrence of the injuries.
53. Further, by reason of the AFL's negligence, within the meaning of section 51(1)(b) of the *Wrongs Act*, it is appropriate for the scope of the AFL's negligence to extend to the injuries.

Secondary victim claims

54. Further, or in the alternative, during the NMF Club period, the AFL owed Krakouer, as a secondary victim, a duty to take reasonable care not to cause him pure mental harm in the manner in which it managed the abuse against his brother, James Krakouer, the primary victim.

PARTICULARS OF ABUSE TO JAMES KRAKOUER WITNESSED BY KRAKOUER

In almost every game where Krakouer and his brother played, Krakouer witnessed James Krakouer being abused by opposition players and spectators.

This abuse commenced in 1982 and continued to worsen over their careers with the NMF Club.

In the early 1980s, player Roger Merrett continuously abused James Krakouer during a match, saying things such as, “you black cunt”, and “nigger”, which he also said to Krakouer during the match.

James Krakouer would regularly respond to the abuse and suffered multiple suspensions throughout his time at the NMF Club as a result.

When James Krakouer was attacked, Krakouer felt it as if he were being attacked too.

Krakouer also refers to Annexure A in so far as it relates to the Krakouer brothers.

Further particulars may be provided following discovery.

55. Within the meaning of section 72(1) of the *Wrongs Act*, it was reasonably foreseeable that a person in the position of Krakouer might, in the circumstances of this case, suffer a recognised psychiatric illness if the AFL failed to take reasonable care in the manner in which it managed the abuse perpetrated upon James Krakouer, having regard to those factors in section 72(2) of the *Wrongs Act*, namely:
- (a) the harm resulted from sudden shock when witnessed by Krakouer during or in connection with matches;
 - (b) Krakouer witnessed James Krakouer being abused; and
 - (c) Krakouer and James Krakouer are brothers, with a pre-AFL career relationship between the two.
56. In the manner in which it managed James Krakouer and the abuse perpetrated upon him, and in causing Krakouer pure mental harm that was foreseeable as a result of the manner in which the AFL failed James Krakouer, the AFL was negligent.

PARTICULARS OF NEGLIGENCE

Krakouer refers to and repeats the AFL failings set out above.

57. As a result of the AFL's negligence, the AFL caused or contributed to Krakouer's injuries.

PARTICULARS OF INJURY

Krakouer refers to and repeats the particulars (b) to (f) sub-joined to paragraph 50 above.

58. If the AFL had complied with the reasonable precautions in so far as they related to James Krakouer, Krakouer would not have suffered psychiatric injuries and/or the extent of the psychiatric injuries.
59. Within the meaning of section 51(1)(a) of the *Wrongs Act*, and in the premises of paragraphs 54 to 58 above, the AFL's negligence was a necessary condition of the occurrence of the psychiatric injuries.
60. Further, by reason of the AFL's negligence, within the meaning of section 51(1)(b) of the *Wrongs Act*, it is appropriate for the scope of the AFL's negligence to extend to the psychiatric injuries.

PART V – LOSS AND DAMAGE

61. As a result of the AFL's negligence, Krakouer has suffered and continues to suffer loss and damage.

PARTICULARS REQUIRED UNDER RULE 13.10(4) - KRAKOUER

In about 1992, Krakouer's AFL career came to an end.

Krakouer left the game damaged because of the abuse he received during the NMF Club period.

Krakouer obtained employment with Australia Post from around 1992 until around 2004. During the course of his employment, Krakouer experienced further abuse, including about his AFL career, having been made vulnerable to such attacks given what occurred in the AFL Competition and the failure of the AFL to take the reasonable precautions, including to condemn the abuse.

Krakouer then moved to the Department of Justice for around four to six years, then worked for BHP in mining and later worked at Linfox. At Linfox, Krakouer was also abused.

Currently, Krakouer works in a cultural mentoring role with the NDIS and Department of Family Fairness and Housing as a contractor. Krakouer manages in the role by limiting his time to management and assisting others who, like him, are suffering.

During Krakouer's AFL career, and since it, Krakouer has suffered the injuries that have impacted upon his post-AFL career.

If it were not for the abuse, it is likely that Krakouer would have gone on to receive further education, and then to go into a role as a counsellor or psychologist, earning significantly more than Krakouer has been able to earn since his AFL career.

Further particulars will be provided in due course by way of a List of Special Damages.

Significant injury

62. Krakouer does not require a Significant Injury within the meaning of Part VBA of the *Wrongs Act* in this proceeding, as this is a claim where the fault concerned is, or relates to, an intentional act or acts that is or are done with intent to cause injury within the meaning of section 28LC(2)(a) of the *Wrongs Act*.

Exemplary damages

63. Further, from at least 26 April 1982, the AFL knew or ought to have known that Krakouer, and James Krakouer, were the subject of abuse and yet the abuse subjected upon Krakouer continued throughout the NMF Club period without the AFL:
- (a) taking the reasonable precautions that were available to it; and
 - (b) taking any action at all.
64. Further, despite what occurred to Krakouer, and James Krakouer, the abuse on other abused players continued, with the AFL failing to learn from its mistakes relating to Krakouer, and James Krakouer.
65. In the premises of paragraphs 63 and 64 6364above:
- (a) the AFL's contumelious conduct should be condemned in the strongest possible terms; and
 - (b) the AFL should be deterred from acting in this way in the future,

such that Krakouer should be awarded exemplary damages.

PART VI – COMMON QUESTIONS OF LAW OR FACT

66. The questions of law or fact common to the claims of Krakouer and each of the group members are:

- (a) Whether the AFL owed a general duty of care to the abused players and the secondary victims.
- (b) Whether the AFL owed a non-delegable duty of care to the abused players.
- (c) Whether there existed in the period the abuse risk of harm to the abused players.
- (d) The state of knowledge regarding the abuse risk of harm from time to time over the period.
- (e) What the AFL actually knew, or ought reasonably to have known, of the abuse risk of harm from time to time over the period.
- (f) The content and/or scope of any duty of care owed by the AFL to the abused players, including whether reasonable care required the AFL to undertake any, and which, of the reasonable precautions in response to the abuse risk of harm.
- (g) Whether during the period the AFL had the ability to control and enforce the rules relating to the abuse risk of harm.
- (h) Whether the AFL breached any duty owed to Krakouer and the abused players by its failures to undertake the reasonable precautions.
- (i) The principles for identifying the cause of Krakouer's and the abused players' and secondary victims' injuries (but not including a determination of causation of injury of the primary victims and the secondary victims).
- (j) The principles for identifying and measuring compensable losses suffered by Krakouer and the abused players and secondary victims resulting from the breaches alleged (but not including the assessment of the losses suffered by the abused players and the secondary victims).

AND THE PLAINTIFF CLAIMS on his own behalf and on behalf of the group members:

- A. Damages, including exemplary damages;
- B. Interest pursuant to the *Supreme Court Act 1986* (Vic); and
- C. Costs.

T P TOBIN

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Solicitors for the Plaintiff

ANNEXURE A: PARTICULARS OF PARAGRAPH 27

Krakouer relies on the following:

- (i) Doug Nicholls in 1932 was rejected by Carlton Football Club for 'smelling': *Sport, Spectators and Traditions of Hatred Responding to Racist Abuse* by Lawrence McNamara (2001);
- (ii) Syd Jackson was regularly targeted by racist slurs in the 1960s and 1970s, including the 1970 Grand Final: *Sport, Spectators and Traditions of Hatred Responding to Racist Abuse* by Lawrence McNamara (2001) and Tatz C M (1995) *Obstacle Race: Aborigines in sport*;
- (iii) an article in the *Age* titled *Blacks in the big league* dated 26 April 1982. The *Age* reported that James Krakouer was hit by a beer can at a game against the Essendon Club, thrown by a spectator. It also reported that each time he went near the boundary line, he could hear a chorus of voices singing out, 'you black bastard'. It also noted that Krakouer and James Krakouer had to put up with blatantly racist 'taunts' since playing in the AFL Competition. It also noted that opposition players used racial abuse as a tactic against the Krakouer brothers. It also noted that Krakouer was upset by being called a "bush Aboriginal". Maurice Rioli Senior noted that he suffered from the abuse he had received in the AFL Competition;
- (iv) an article in *The Canberra Times* titled *North welcomes Krakouer back* dated 11 June 1982. The article reported that James Krakouer had had an 'after-match clash' with player Rod Austin, after Rod Austin had physically abused Krakouer during a match;
- (v) in his book *Brotherboys* by Sean Gorman (2005), Gorman noted that, after the Rod Austin incident, articles began to appear in the press about how the Krakouers should handle the "attention" they were receiving. A journalist from the *Sun* was quoted as saying, "when an opponent can't beat you in the physical duels, he will scratch at the veneer looking for a chink in your armour. They [the Krakouers] have got to realise that if an opposition player resorts to these tactics you have got him – he has explored every other physical avenue to upset you and his last chance is a verbal assault";
- (vi) an article in the *Age* titled *Muir outed for 12 matches* dated 8 May 1984. The article noted that player Robert Muir had been subjected to "racist taunts and remarks during Saturday's game against Carlton", a cause of

his being suspended. Player Maurice Rioli provided a character letter and said that many Aboriginal footballers suffered from abuse and racist remarks;

- (vii) an article in the *Age* titled *Football wizards with their own black magic* dated 29 May 1985. The article referred to a “good deal” of racist insults being shouted at “black footballers” during matches;
- (viii) an article in the *Age* titled *The trials and triumphs of Jimmy Krakouer*. The article noted that James Krakouer experienced abuse and in particular booing from crowds at matches. It recorded James Krakouer saying that earlier in his career he responded more frequently to opposition player abuse causing him to go before the AFL’s tribunal;
- (ix) an article of the *Age*’s Martin Flanagan in about 1987 recorded the abuse of James Krakouer by the Melbourne Cricket Ground spectators who ‘bayed for blood’: Tatz C M (1995) *Obstacle Race: Aborigines in sport*;
- (x) an article in the *Age* titled *Some footballers get abused for more than just the color [sic] of their jumper* dated 24 August 1991. The article noted that racism is illegal in every aspect of society except on the football field. It posed the question about why swearing is a reportable offence, but not racism, on the field. It also posed the question what should be done about this by the AFL.
- (xi) an article in the *Age* titled *Racism on the field AFL football’s shameful secret* dated 25 August 1991. The article reported that discrimination against the abused players was an increasing psychological ‘football weapon’ tactic employed by coaches against the abused players. Collingwood captain Tony Shaw was cited as saying he would make a racist ‘comment’ every week if he thought it would help him win a match;
- (xii) an article in the *Sunday Age* titled *Racism a blight on both sides of the fence* dated 25 April 1993. The author of the article reported hearing “racial taunts being hurled by Magpies fans at the collective talents of Derek Kickett, Gavin Wanganeen and Michael Long”. The author said that Collingwood Club president, Allan McAlister’s, comments that ‘racial taunts’ are “part and parcel of the game” were not acceptable. He opined that the abuse by players should result in loss of match payments, with the AFL Commission needing to take a stronger stance on the abuse;
- (xiii) an article in the *Sunday Age* titled *Worsfold regrets he used racist remarks* dated 25 April 1993. The *Sunday Age* reported that player John Worsfold admitted to making on-field ‘racist remarks’ and that he acknowledged that

“racist remarks were a problem for sure, but said the perpetrators were motivated by the desire to score any possible advantage”. The article also reported Essendon Club president David Shaw noting that the club’s “four or five Aboriginal players ‘cop heaps’ [of abuse]. It also noted a survey whereby 36% of players admitted to having made racist remarks in a match;

- (xiv) an article in the *Canberra Times* titled *The sorry record of racism in sport* dated 14 May 1993. The article speaks of the toxicity of the psychological warfare of sport provoking competitors and opposing fans to abuse the abused players;
- (xv) an article in the *Australian* newspaper titled *Racism peace plan rebounds on AFL* dated 6 May 1995. The *Australian* reported that abused player Michael Long spoke out about the abuse, despite having been gagged by the AFL;
- (xvi) an article in the *Sydney Morning Herald* newspaper titled *Back to the dark ages* dated 8 May 1995. The article reported that Collingwood captain, Tony Shaw, alluded to using the abuse as a ploy to unsettle the abused players in matches as did Essendon Club president David Shaw. It also reported abused player Nicky Winmar’s lifting of his shirt in response to the abuse he was receiving from spectators in 1993. It also reported Collingwood player Mick McGuane admitting to the abuse during matches, saying things ‘you normally wouldn’t say if you saw them in the street’. The article reported that nothing had changed in terms of the abuse of the abused players since 1993;
- (xvii) an article in the *Canberra Times* titled *AFL says sorry for ‘botched’ race row* dated 11 May 1995. The article detailed the apology of the AFL over resolving the abuse of the abused players and said it was to improve training, advertising campaigns and codes of conduct;
- (xviii) an article in the *Age* titled *Black backlash* dated 13 May 1995. The article refers to James Krakouer’s physical fight against the abuse;
- (xix) an article in the *Australian* newspaper titled *End to racism begins with last of the dinosaurs* dated 13 May 1995. The *Australian* reported the abuse suffered by player Michael Long, refusing the AFL’s attempt to deal with the racist attack he suffered at the hands of opposition Club player Damian Monkhorst. It also reported Collingwood AFL Club president Allan McAlister’s racist remarks pertaining to Aboriginal peoples being welcome in the AFL ‘so long as they behaved like white people’;

- (xx) an article in the *Australian* newspaper titled *McLean: you won't stop racial abuse* dated 13 May 1995. The *Australian* reported abused player, Michael McLean, being abused in 1983 when spectators screamed at him 'you coon, go back to where you come from. This is not your f...ing country, nigger boy'. The *Australian* also reported McLean stating that the AFL had ignored the abuse problem for years, including in connection with James Krakouer repeatedly coming before the AFL's tribunal for retaliating to abuse, but 'nothing was done about it and I felt helpless';
- (xxi) an article in The Canberra Times titled *Aboriginal boys taunted as AFL combats racism* dated 18 May 1995. The article concerns junior players being subjected to abuse at the Melbourne Cricket Ground. It also details abused player Derek Kickett revealing that he was subjected to abuse from spectators in various matches, calling for educational programmes;
- (xxii) an article in the *Australian* newspaper titled *Long demands severe abuse penalties* dated 18 May 1995. The *Australian* reported that Michael Long was abused by a player of the opposite Club. Michael Long also requested hefty penalties and fines for racist abuse during matches. Ongoing abuse was admitted by the AFL's then chief executive;
- (xxiii) an article in the *Australian* newspaper titled *Human rights mediator to probe new AFL racism claim* dated 19 May 1995. The *Australian* reported an incident of a racial "taunt" levelled at a Richmond Club player, Justin Murphy;
- (xxiv) an article in The Canberra Times titled *AFL pressured in new racism row* dated 30 August 1995. The article noted that abused player Chris Lewis suffered abuse from Greg Williams.
- (xxv) an article in the *Mercury* titled *AFL move to silence ugly six* dated 23 April 1997. The article reported that the AFL had identified six 'repeat offenders of racial taunts' by players against the abused players;
- (xxvi) an article in the *Mercury* titled *Taunt not part of a day's play: Bomber* dated 23 April 1997. The article noted that abused player Che Cockatoo-Collins was the victim of the abuse and said that players were getting away with it because of the AFL's mediation, which he said should be removed and replaced with fines and suspensions;
- (xxvii) an article in the *Age* titled *Dons hit AFL on racism handling* dated 30 April 1997. The article reported that AFL General Manager of Football Operations Ian Collins had stated that Aboriginal players should not be using the AFL as a podium for their anti-racism stand and that the abused

- players needed to think about the game because of 'how it projects in the community';
- (xxviii) an article in the *Mercury* titled *AFL forced to reject fresh accusations of racism* dated 25 May 2000. The article reported that Aboriginal activist Charles Perkins accused the AFL's board of acting in a racist manner at the highest level;
 - (xxix) a journal article titled *Sport, Spectators and Traditions of Hatred Responding to Racist Abuse* by Lawrence McNamara (2001), particularly focussing on racist abuse in the AFL. The author opined that the AFL had not addressed racist abuse of abused players by fans.
 - (xxx) an article of the *Herald Sun* titled *Adam Goodes 'gutted' after 13-year-old girl's racial slur, who called the Sydney champion today to apologise* dated 24 May 2013. It was noted that the teenager called abused player Adam Goodes an 'ape' on the sidelines;
 - (xxxi) an article from the *Australian Broadcasting Commission* titled *Majak Daw allegedly subjected to racist abuse* dated 13 May 2013. The article stated that abused player Majak Daw had been subjected to racial abuse by spectators;
 - (xxxii) an article from the *Herald Sun* titled *Collingwood investigates alleged racist slurs aimed at Carlton star Chris Yarran* dated 10 April 2013. The article detailed abuse of abused player Chris Yarran by a spectator. AFL CEO Andrew Demetriou was noted as suggesting bans on fans found guilty of 'severe cases' of the abuse;
 - (xxxiii) an article from the *Conversation* titled *Booing Adam Goodes – racism is in the stitching of the AFL* dated 29 July 2015. The article spoke about the booing abused player Adam Goodes received from spectators;
 - (xxxiv) an article from SBS News titled *Racism still Part of AFL Culture: Study* dated 25 May 2016. It was noted that the abuse was ongoing for players, with more needing to be done to educate the players;
 - (xxxv) an article from the *Conversation* titled *The Aboriginal football ethic where the rules get flexible* dated 3 August 2016. The article noted that, despite the 1967 referendum and changes in society, in the AFL Competition there existed overt abuse;
 - (xxxvi) an article from the *Green Left Weekly* titled *AFL star backs Lumumba's racism claims, AFL caught lying* dated 12 September 2017. The article concerned Heritier Lumumba and Leon Davis concerning racism at

- Collingwood Football Club as well as Andrew Krakouer being called a 'chimp';
- (xxxvii) an article from the *New Daily* titled *Former player alleges 'systematic' racism in the AFL* dated 10 May 2018. The article detailed abused player Joel Wilkinson having suffered intense racism during his time in the AFL Competition for which the AFL apologised;
 - (xxxviii) an article from the *Australian Associated Press* titled *AFL Apologises for Failures in Goodes Saga* dated 7 June 2019. The article detailed the AFL's apology over its failures in responding to the abuse against abused player Adam Goodes;
 - (xxxix) an article from the *Australian Broadcasting Commission* titled *The persecution of Robert Muir is the story football doesn't want to hear* dated 23 August 2020. The article concerned abuse to abused player Robert Muir at Victoria Park in 1980 where he was spat on, urinated on, and verbally abused. Racist chants were heard in the dressing room after the match. When the abused player was leaving the ground, Collingwood fans rushed to his vehicle, cracked the windscreen with a bottle and continued the abuse. The article noted further abuse of Robert Muir in the AFL Competition;
 - (xl) an article from the *Australian Broadcasting Commission* titled *Joel Wilkinson, the AFL and the search for racial justice* dated 7 February 2021. The article detailed abused player Joel Wilkinson's decade long attempts to address institutional racism in the AFL, and the AFL's attempts to silence him;
 - (xli) an article from the *Age* titled *Call racism out to stamp it out, says academic* dated 27 February 2021. An academic said that the AFL should trial a zero tolerance approach to racism that requires all players, officials and administrators at sporting clubs to call out racism whenever it occurs, rather than relying on the victim to raise an objection;
 - (xlii) an article from the *Age* titled *Just shut up: Secret recording suggests anti-racism stance limited Wilkinson's career* dated 8 March 2021. The article noted a recording between abused player Joel Wilkinson and a former manager who told him that Clubs believed that the abused player was grandstanding about racism;
 - (xlili) an article from *France 24* titled *AFL 'not safe' for Indigenous players - retiring star Betts* dated 18 August 2021. This article reported that abused

player Eddie Betts said that the AFL had to improve its handling of the abuse;

- (xliv) an article from *North Melbourne Football Club's website* titled *Crocker, I wish I could have done more to stand up for the Krakouers* dated 27 January 2022. Darren Crocker stated that he wished he had done more for the brothers and that there should have been more education at the time;
- (xlv) an article from *The Australian* titled *How trailblazers father Jimmy and uncle Phil Krakouer set tone for son* dated 22 May 2022. Abused player Andrew Krakouer had stated that he was abused whilst a player at Collingwood Football Club;
- (xlvi) an article from *BBC News* titled *Hawthorn Football Club hit by 'harrowing' racism, bullying claims* dated 21 September 2022. The article detailed an investigation into an abused player who was told to 'get rid of my unborn child and partner' and remove the SIM from his phone to cease further contact;
- (xlvii) an article from *BBC News* titled *Nicky Winmar AFL faces same racism problem 30 years on* dated 14 April 2023. The article noted an opinion of a sports historian that the AFL was "nowhere close" to a safe environment for culturally diverse players;
- (xlviii) an article from *The Age* titled *Don't be conned by the PR spin, The AFL is no exemplar on racism* dated 5 June 2023. The article details efforts made by the AFL to control media coverage;
- (xlix) an article from the *Guardian* titled *'Culture of silence' AFL and AFLW players fearful of speaking out on racism, report finds* dated 27 June 2023. The article noted that a report found that 77% of AFLW and 40% of AFL Indigenous or multicultural players reported not being satisfied with how a racism incident was handled once reported.

Krakouer may provide further particulars following discovery.