



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

Case: S ECI 2023 04323
S ECI 2023 04323
Filed on: 09/10/2025 10:54 AM

B E T W E E N

PHILLIP BRENT KRAKOUER

First Plaintiff

-and-

NEIL ELVIS WINMAR

Second Plaintiff

-and-

AUSTRALIAN FOOTBALL LEAGUE (ACN 004 155 211)

Defendant

AMENDED WRIT

**FILED PURSUANT TO THE ORDERS OF THE HONOURABLE JUSTICE KEOGH MADE
ON 25 SEPTEMBER 2025**

Date of Document:	9 October 2025	Solicitors Code: 113394
Filed on behalf of:	The Plaintiffs	
Prepared by:	Margalit Injury Lawyers	Telephone: (03) 9133 0288
	Level 12/271 William St	Ref: 22371
	Melbourne VIC 3000	Email: info@margalitlawyers.com.au

TO THE DEFENDANT

TAKE NOTICE that this proceeding has been brought against you by the plaintiff for the claim set out in this writ.

IF YOU INTEND TO DEFEND the proceeding, or if you have a claim against the plaintiff which you wish to have taken into account at the trial, **YOU MUST GIVE NOTICE** of your intention by filing an appearance within the proper time for appearance stated below.

YOU OR YOUR SOLICITOR may file the appearance. An appearance is filed by—

- (a) filing a “Notice of Appearance” with the Prothonotary by submitting the Notice of Appearance for filing electronically in RedCrest or in person at the Principal Registry, 450 Little Bourke Street, Melbourne. See www.supremecourt.vic.gov.au; and
- (b) on the day you file the Notice, serving a copy, sealed by the Court, at the plaintiff's address for service, which is set out at the end of this writ.

IF YOU FAIL to file an appearance within the proper time, the plaintiff may **OBTAIN JUDGMENT AGAINST YOU** on the claim without further notice.

***THE PROPER TIME TO FILE AN APPEARANCE** is as follows—

- (a) where you are served with the writ in Victoria, within 10 days after service;
- (b) where you are served with the writ out of Victoria and in another part of Australia, within 21 days after service;
- (c) where you are served with the writ in Papua New Guinea, within 28 days after service;
- (d) where you are served with the writ in New Zealand under Part 2 of the Trans-Tasman Proceedings Act 2010 of the Commonwealth, within 30 working days (within the meaning of that Act) after service or, if a shorter or longer period has been fixed by the Court under section 13(1)(b) of that Act, the period so fixed;
- (e) in any other case, within 42 days after service of the writ.

IF the plaintiff claims a debt only and you pay that debt, namely, \$ and \$ for legal costs to the plaintiff or the plaintiff's solicitor within the proper time for appearance, this proceeding will come to an end. Notwithstanding the payment you may have the costs taxed by the Court.

FILED 9 October 2025

Prothonotary

THIS WRIT is to be served within one year from the date it is filed or within such further period as the Court orders.

Indorsement of Claim – see Amended Statement of Claim

1. Place of trial – Melbourne
2. Mode of Trial – Judge and Jury
3. This Writ was filed for the Plaintiff by – Margalit Injury Lawyers of Level 12/271 William St, Melbourne VIC 3000
4. The address of the First Plaintiff is – 247 Mitcham Road, Mitcham VIC 3132
5. The address of the Second Plaintiff is – King George Street, Cohuna VIC 3568
6. The address for service of the First Plaintiff and Second Plaintiff is – C/- Margalit Injury Lawyers, Level 12/271 William St, Melbourne VIC 3000
7. The email address for service of the Plaintiff is – info@margalitlawyers.com.au
8. The address of the Defendant is – AFL House, 140 Harbour Esplanade, Docklands VIC 3008

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

S ECI 2023 04323

BETWEEN:

PHILLIP BRENT KRAKOUER

First Plaintiff

and

NEIL ELVIS WINMAR

Second Plaintiff

and

AUSTRALIAN FOOTBALL LEAGUE (ACN 004 155 211)

Defendant

AMENDED STATEMENT OF CLAIM

**FILED PURSUANT TO THE ORDERS OF THE HONOURABLE JUSTICE KEOGH MADE
ON 25 SEPTEMBER 2025**

Date of document: 9 October 2025

Solicitors' code: 113394

Filed on behalf of: the plaintiffs

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Prepared by: Margalit Injury Lawyers
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Melbourne VIC 3000

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Reference: 22371

A. THE PLAINTIFFS AND GROUP MEMBERS

A1. Group members

1. The plaintiffs bring this proceeding as a group proceeding pursuant to Part 4A of the *Supreme Court Act 1986* (Vic) on their own behalf and on behalf of all persons who in the period between May 1980 and the date of this Amended Statement of Claim (**ASOC**):
 - (a) are or were Australian Rules football players who participated in the Australian Rules Football games and competitions conducted by the defendant throughout Australia (but excluding the professional elite Australian Rules Football competitions known as "AFLW Competition") (the **Australian Rules Football Competition**) (**Players**);
 - (b) are **Indigenous** persons, being Aboriginal or Torres Strait Islander persons who:
 - (i) identify as Aboriginal or Torres Strait Islander;

- (ii) is of Aboriginal or Torres Strait Islander descent; and
 - (iii) is accepted by an Aboriginal or Torres Strait Islander person in the Aboriginal or Torres Strait Islander Community; and
- (c) are or were victims of physical and/or verbal racist abuse whilst participating in the Australian Rules Football Competition and suffered physical injury, psychological injury, and/or psychiatric injury (**the Injuries**)—
(**Abused AFL Players**); or
- (d) are or were:
 - (i) a member of the Abused AFL Players’ family (howsoever it may be described or referred to in the legislation set out in Schedule A to this ASOC), or are in a close kinship relationship with an Abused AFL Player(s); and
 - (ii) have suffered pure mental harm arising wholly or partly from mental harm in connection with an Abused AFL Player(s) being injured or put in danger by reason of physical and/or verbal racist abuse they experienced whilst participating in the Australian Rules Football Competition—
 (**Family Group Members**); or
- (e) are or were:
 - (i) the executors or administrators of, or beneficiaries of or persons with an interest in, the estates of deceased persons who would be Abused AFL Players and/or Family Group Members had they not died prior to the date of this amended Statement of Claim (**deceased Group Members**); or
 - (ii) the dependants of Abused AFL Players and/or Family Group Members and/or deceased Group Members (howsoever described or referred to in the legislation set out in Schedule B to this ASOC)—

where a cause of action had vested in or may be brought by that person (sub-paragraphs 1(e)(i) and (ii) together, **the Estate and Dependency Group Members**).

2. At the commencement of this proceeding, there are more than seven persons who have the claims set out in this ASOC against the defendant.

A2. The first plaintiff and Mr James Krakouer

3. The first plaintiff (**Phillip Krakouer**) was born on 15 January 1960, at Mt Barker in the State of Western Australia.

4. Phillip Krakouer is an Indigenous person, being a Nyungar/Noongar man of the Minang mob.
5. Phillip Krakouer is the brother of Mr James Krakouer (**James Krakouer**).
6. In the period from around 1980 to in or around 1992, Phillip Krakouer was registered with the defendant to play Australian Rules Football in the Australian Rules Football Competition.

Particulars

- i. Phillip Krakouer and his brother James Krakouer were recruited in or about 1980 to play for the North Melbourne Football Club by the (then) General Manager of North Melbourne Football Club, Mr Ron Joseph, to commence their professional football careers in the 1982 season.*
 - ii. Further particulars may be provided following discovery.*
7. Phillip Krakouer:
 - (a) in the period from around 1982 to in or about 1989:
 - (i) was employed by the North Melbourne Football Club to play Australian Rules Football in the Australian Rules Football Competition;
 - (ii) was registered to play Australian Rules Football with the North Melbourne Football Club in the Australian Rules Football Competition;
 - (iii) participated in the Australian Rules Football Competition; and
 - (iv) played approximately 141 matches for the North Melbourne Football Club in the Australian Rules Football Competition;
 - (b) in 1991:
 - (i) was employed by the Footscray Football Club to play Australian Rules Football in the Australian Rules Football Competition;
 - (ii) was registered to play Australian Rules Football with the Footscray Football Club in the Australian Rules Football Competition;
 - (iii) participated in the Australian Rules Football Competition; and
 - (iv) played approximately 7 matches for the Footscray Football Club in the Australian Rules Football Competition; and
 - (c) in 1992:
 - (i) was employed by the Sydney Swans Football Club to play Australian Rules Football in the Australian Rules Football Competition; and

- (ii) retired from the Australian Rules Football Competition without playing a match for the Sydney Swans Football Competition.

8. James Krakouer:

- (a) was born on 13 October 1958, at Mt Barker in the State of Western Australia;
- (b) is an Indigenous person, being a Nyungar/Noongar man of the Minang mob;
- (c) is the brother of Phillip Krakouer;
- (d) in the period from around 1980 to in or around 1992, was registered with the defendant to play Australian Rules Football in the Australian Rules Football Competition;
- (e) in the period from around 1982 to in or around 1989:
 - (i) was employed by the North Melbourne Football Club to play Australian Rules Football in the Australian Rules Football Competition;
 - (ii) was registered to play Australian Rules Football with the North Melbourne Football Club in the Australian Rules Football Competition;
 - (iii) participated in the Australian Rules Football Competition;
 - (iv) played approximately 134 matches for the North Melbourne Football Club in the Australian Rules Football Competition;
- (f) in the period from around 1990 to around 1991:
 - (i) was employed by the St Kilda Football Club to play Australian Rules Football in the Australian Rules Football Competition;
 - (ii) was registered to play Australian Rules Football with the St Kilda Football Club in the Australian Rules Football Competition;
 - (iii) participated in the Australian Rules Football Competition; and
 - (iv) played approximately 13 matches for the St Kilda Football Club in the Australian Rules Football Competition.

A3. The second plaintiff

- 9. The second plaintiff (**Neil Winmar**) was born on 25 September 1965, in Kellerberrin in the State of Western Australia.
- 10. Neil Winmar is an Indigenous person, being a Nyungar/Noongar man of the Wilman mob.

11. In the period from around 1987 to in or around 1999, Neil Winmar was registered with the defendant to play Australian Rules Football in the Australian Rules Football Competition.

Particulars

- i. At the end of 1986, when he was around 21 years of age, Neil Winmar relocated from Western Australia to the State of Victoria to play in the Australian Rules Football Competition for St Kilda Football Club.*
- ii. Further particulars may be provided following discovery.*

12. Neil Winmar:

- (a) in the period from around 1987 to in or around 1998:
 - (i) was employed by the St Kilda Football Club to play Australian Rules Football in the Australian Rules Football Competition;
 - (ii) was registered to play Australian Rules Football with the St Kilda Football Club in the Australian Rules Football Competition;
 - (iii) participated in the Australian Rules Football Competition;
 - (iv) played approximately 230 matches for the St Kilda Football Club in the Australian Rules Football Competition;
- (b) in 1999:
 - (i) was employed by the Western Bulldogs Football Club (formerly known as Footscray Football Club) to play Australian Rules Football in the Australian Rules Football Competition;
 - (ii) was registered to play Australian Rules Football with the Western Bulldogs Football Club in the Australian Rules Football Competition;
 - (iii) participated in the Australian Rules Football Competition; and
 - (iv) played approximately 21 matches for the Western Bulldogs Football Club in the Australian Rules Football Competition.

B. THE DEFENDANT AND THE AUSTRALIAN RULES FOOTBALL COMPETITION

B1. Corporate governance

13. The defendant:

- (a) was and is a corporation incorporated in Australia and capable of being sued;

- (b) between 18 June 1929 and 23 January 1990, was known as the Victorian Football League (**VFL**, alternatively **League**);
- (c) since 24 January 1990, has been known as the Australian Football League (**AFL**, alternatively, **League**);
- (d) was and is responsible for controlling, directing, coordinating and conducting the sport of Australian Rules Football, and controlling, directing, coordinating and conducting the Australian Rules Football Competition (alternatively the **VFL Competition** and/or the **AFL Competition** (as applicable)), on the terms further set out in paragraphs 14 to 77 below; and
- (e) was and is the entity through which football clubs (**Clubs**) who field teams participate in the Australian Rules Football Competition.

Particulars

- i. *The VFL's financial statements for the year ended 31 October 1979 state that the principal activity of the VFL in the financial period has been to "promote, control, manage and encourage Australian football".*
- ii. *The VFL 84th Annual Report for the season 1980 states that the VFL, established in 1896 and incorporated in 1929, is "in existence to promote, plan and generally manage the sport of Australian football in a professional manner in order that it achieves its full potential, now and in the future" (p i). The 84th Annual Report continues "In pursuing our aims, we will ... ensure that the VFL competition is presented to the public in the best possible manner and conditions (so as to attract the largest possible number of spectators) and ... ensure the VFL is kept on a sound, independent financial footing" (p i).*
- iii. *The VFL 84th Annual Report for the season 1980 states that the responsibilities for the VFL are (p 2):*
 - A. *to make the VFL competition as strong and even as possible;*
 - B. *to provide facilities of increasingly high standards to meet rising spectator expectations;*
 - C. *to invest sufficient resources into the future promotion and development of the sport within Victoria and developing States – at all levels – so that it continues to play a leading role in community life; and*
 - D. *to effectively manage the present operations and an ongoing responsibility to restructure operations if this will help in achieving the objectives.*
- iv. *The financial statements for the year ended 31 October 1980 state that the principal activities of the VFL in the course of*

the financial period have been “to promote, control, manage and encourage Australian football”.

- v. *The VFL 86th Annual Report for the season 1982 (p i) substantially repeats the statements referred to in particular (ii) above. The financial statements for the year ended 31 October 1982 state that the principal activity of the VFL in the financial period have been to “promote, control, manage and encourage Australian football”.*
- vi. *The VFL 87th Annual Report for the season 1983 (p 1) substantially repeats the statements referred to in particular (ii) above. The financial statements for the year ended 31 October 1983 state that the principal activity of the VFL in the financial period have been “to promote, control, manage and encourage Australian football”.*
- vii. *The VFL Annual Report for the season 1985 (p 1) substantially repeats the statements referred to in particular (ii) above.*
- viii. *The VFL Annual Report for the season 1988 (p 1) substantially repeats the statements referred to in particular (ii) above. The financial statements for the year ended 31 October 1988 state that the principal activity of the VFL in the course of the financial year have been to “promote, control, manage and encourage Australian football”.*
- ix. *The AFL Annual Report for the season 1993 (p i) substantially repeats the statements referred to in particular (ii) above.*
- x. *The AFL Annual Report for the season 1996 states that the AFL’s mission statement is “the Australian Football League exists to (p i):*
 - A. develop and manage the AFL competition to ensure it’s Australia’s most successful national sports competition in the entertainment industry;*
 - B. maximise the economic, cultural and social benefits of Australian football to its member clubs, the players, the football fraternity and the community at large;*
 - C. promote and develop participation and support for Australian football throughout Australia and overseas; and*
 - D. foster good citizenship, both on and off the playing field”.*
- xi. *The AFL Annual Report for the season 2001 states that the AFL’s objective is to “effectively manage the national competition to ensure it is the most successful national elite sports competition for the benefit of our key stakeholders – our AFL clubs, the players and the public” (p 7).*

14. From the start of the Relevant Period to 1985, the business of the VFL in controlling, directing, coordinating and conducting the Australian Rules Football Competition was undertaken by the VFL

under the direction of Club directors, being representatives of the Clubs and who were appointed to sit as directors of the VFL Board of Directors for the purpose of managing and conducting the Australian Rules Football Competition.

Particulars

- i. *The VFL 81st Annual Report for the season 1977 (p 2) lists the Club Directors as representatives of Carlton, Collingwood, Essendon, Fitzroy, Footscray, Geelong, Hawthorn, Melbourne, North Melbourne, Richmond, South Melbourne and St Kilda Football Clubs.*
- ii. *The VFL 82nd Annual Report for the season 1978 (p 1) lists the Club Directors as representatives of Carlton, Collingwood, Essendon, Fitzroy, Footscray, Geelong, Hawthorn, Melbourne, North Melbourne, Richmond, South Melbourne and St Kilda Football Clubs.*
- iii. *The VFL 86th Annual Report for the season 1982 (p 4) lists the Club Directors as representatives of Carlton, Collingwood, Essendon, Fitzroy, Footscray, Geelong, Hawthorn, Melbourne, North Melbourne, Richmond, St Kilda and Swans Football Clubs.*
- iv. *The VFL 86th Annual Report for the season 1982 (p 7) states: "The Victorian Football League IS the 12 Clubs ... The VFL is run and operated by the 12 clubs, each of which appoints a Director to sit on the League Board. All decisions relating to the overall operating of the VFL are made by the Directors."*
- v. *The VFL 87th Annual Report for the season 1983 (p 4) lists the Club Directors as representatives of Carlton, Collingwood, Essendon, Fitzroy, Footscray, Geelong, Hawthorn, Melbourne, North Melbourne, Richmond, St Kilda and Swans Football Clubs.*

15. On 12 December 1984, the VFL Board of Directors resolved to restructure the VFL and appoint an independent Commissioner and four part-time Commissioners (**Commission**) to manage and conduct the Australian Rules Football Competition on behalf of the Clubs.

Particulars

- i. *In his book "The Phoenix Rises", Ross Oakley, who was appointed Chairman of the VFL (and later, CEO of the AFL) describes the adoption of amendments to the VFL's Articles of Association at a meeting of the VFL on 12 December 1984. The amendments provided for the operation of a proposed Commission (pp 38-9).*
- ii. *The VFL 88th Annual Report for the season 1984 (p 3) states that the VFL Directors, representing the 12 clubs of the competition, confirmed at a meeting on February 6, 1985, the appointment of Mr J C Hamilton as the first Commissioner of*

the VFL. At the same time, the Board of Directors also confirmed the appointments of four part-time Commissioners.

iii. Further particulars may be provided after discovery.

16. From around 1985 until around July 1993, the business of controlling, directing, coordinating and conducting the Australian Rules Football Competition was undertaken by the VFL or AFL (as applicable):

- (a) under the direction of a Board of Directors, as representatives of the Clubs; and
- (b) by the Commission, which was responsible for controlling, directing, coordinating and conducting the Australian Rules Football Competition on behalf of the Clubs in accordance with the common interests of the Clubs and the objectives of the VFL or AFL (as applicable) as set from time to time.

Particulars

- i. The particulars subjoined to paragraph 15 above are repeated.*
- ii. The VFL 88th Annual Report for the season 1984 (p 7) states that under the restructured arrangements “[u]ltimate control would rest with the clubs who would rely on the commission to manage the game in their common interests and in line with the objectives of the VFL”.*
- iii. Further particulars may be provided after discovery.*

Articles of Association

17. By no later than 1972, the AFL operated under articles of association (**Articles of Association**).

Particulars

- i. The VFL 76th Annual Report for the season 1972 states that the VFL Board is responsible in the terms of the Articles of Association for all policy decisions, the members of the VFL Board – representing the twelve Clubs – are required to devote constant attention to the affairs of the VFL (p 12).*
- ii. The VFL 77th Annual Report for the season 1973 states that the Articles of Association were amended to provide for a Complaints Committee (p 14).*
- iii. The VFL 78th Annual Report for the season 1974 states that refers to the Articles of Association (p 7).*
- iv. the VFL 87th Annual Report for the season 1983 refers to recommendations approved by the VFL Board and VFL Club General Managers to amend the Articles of Association (p 46).*

- v. *In his book “The Phoenix Rises”, Ross Oakley, who was appointed Chairman of the VFL (and later, CEO of the AFL) describes the adoption of amendments to the VFL’s Articles of Association at a meeting of the VFL on 12 December 1984. The amendments provided for the operation of a proposed Independent Commission (pp 38-9).*
- vi. *1993 Articles of Association (as defined in paragraph 18 below) which are in writing.*
- vii. *Further particulars may be provided following discovery.*

18. On 12 December 1984, the VFL adopted amended Articles of Association (**1984 Articles of Association**) which, *inter alia*, provided:

- (a) for the establishment of a Board of Commissioners to be called the Commission, one full time and four part time; and
- (b) for the Commission to have such powers as the League may from time-to-time delegate to it on the basis that any delegation of power may be revoked or made subject to conditions at any time by a resolution passed by a simple majority at a meeting of the League.

Particulars

- i. *In his book “The Phoenix Rises”, Ross Oakley, who was appointed Chairman of the VFL (and later, CEO of the AFL) describes the adoption of the 1984 Articles of Association on the terms described in the paragraph (at pp 39-41). The Commission structure was reaffirmed at a meeting of the VFL Board of Directors on 4 December 1985 (p 47).*
- ii. *Further particulars may be provided following discovery.*

19. Under the terms of the 1984 Articles of Association as pleaded in paragraph 18 above, the Commission was vested with the following powers and responsibilities:

- (a) as to Players, to set and/or vary the basis upon which the Players are entitled to play for Clubs in the VFL Competition;
- (b) as to Clubs:
 - (i) to admit any Club or expel or suspend any Club from the VFL Competition;
 - (ii) to amalgamate or join any league;
 - (iii) to take over the administration of any Club;
 - (iv) to vary the basis of participation by Clubs in the VFL Competition;

- (v) to provide financial assistance to any Club (other than by payment of advances or final dividends expressly authorised by the Board of Directors) or to guarantee the obligations of any Club;
- (vi) to determine any distributions to be made to Clubs;
- (c) as to rules, to amend or introduce any rules and regulations or player rules of the League and to amend the Laws of the Game;
- (d) as to grounds, to undertake any major capital works (including major works in relation to existing assets of the League);
- (e) as to television and radio broadcasting, to exercise any powers of the League in owning or operating any television or radio station;
- (f) to appoint the representatives of the League on the National Football League of Australia or Australian Football Championships Pty Ltd.

Particulars

- i. So far as the plaintiffs can say prior to discovery, the particulars to paragraph 18 above are repeated.*
- ii. Further particulars may be provided following discovery.*

20. On 19 July 1993, the AFL adopted Articles of Association (**1993 Articles of Association**) which, *inter alia*, provided:

- (a) for the establishment of an independent Commission consisting of not less than six nor more than eight non-executive Commissioners and executive Commissioners (including a Chief Executive Officer) to manage the business of the AFL; and
- (b) the board of Commissioners are the directors of the AFL for the purposes of the Corporations Law as then in force.

Particulars

- i. 1993 Articles of Association cl 1, 37 and 52,*

21. The 1993 Articles of Association provided, *inter alia*, that:

- (a) **Appointees** are representatives of a Club admitted to membership of the League (cl 1);
- (b) **Life Members** are persons who are elected pursuant to cl 16 of the articles of association (cl 1);
- (c) the membership of the League shall consist of the Appointees and the Life Members who become members of the League in accordance with the articles of association (cl 4);

- (d) each Club shall be entitled to nominate one eligible person who shall be any of the President, Vice-President or a Director of the Club, for membership of the League (cl 5);
- (e) only the members who are Appointees shall have the right to vote and, subject to the matters alleged in sub-paragraphs (f) and (g) below, to be entitled to notice of and to attend meetings (cl 4);
- (f) Life Members shall be entitled to attend the annual general meeting but are not entitled to receive notice of meetings nor attend such meetings (cl 16);
- (g) Life Members shall not be entitled to vote in any meetings of the League (cl 16); and
- (h) the business of the League shall be managed by the Commission who may exercise all such powers of the League as are not required to be exercised by the League in a general meeting (cl 52).

22. Under the terms of the 1993 Articles of Association as pleaded in paragraph 21 above, the Commission was vested with the following powers and responsibilities:

- (a) as to Clubs:
 - (i) to grant an entity the Status of a Club and the right to representation on the AFL subject to the provision that such a decision could be reversed at a general meeting of the AFL where the number of Appointees voting in favour of reversing the decision achieves two-third of all Appointees (cll 12, 15(a));
 - (ii) relocate the playing, administration or social base of a Club or merge two or more Clubs with the consent of the Club or Clubs involved subject to the provision that such a decision could be reversed at a general meeting of the AFL where the number of Appointees voting in favour of reversing the decision achieves two-third of all Appointees (cll 12(a) and (b), 15(a)); and
 - (iii) to suspend or terminate the right of a Club to representation on the AFL for a breach of the provisions of its Licence Agreement which give rise to a right of the AFL to appoint an administrator (in the case of suspension) or to terminate such Licence Agreement, subject to a provision that any such decision must be ratified at a general meeting of the AFL on a vote by a simple majority of all Appointees (cll 13, 15(b));
- (b) as to rules:

- (i) to exercise all the powers of the AFL to make rules, regulations and by-laws relating to all aspects of the playing of football and the control and management of football matches and competitions (cl 54).

Memorandum of Association

- 23. Further, by no later than 1993, the AFL operated under a memorandum of association (**Memorandum of Association**).
- 24. The Memorandum of Association provided, *inter alia*, that the objects for which the AFL is established are:
 - (a) to conduct the Australian Rules Football Competition;
 - (b) to promote and encourage the Australian National Game of Football; and
 - (c) to promote and encourage football matches in the States and Territories of the Commonwealth and overseas.

Particulars

i. Memorandum of Association cl 2(a) – (c).

- 25. Under the terms of the Memorandum of Association as pleaded in paragraph 23 above, and for the purpose of carrying out its objects as pleaded in paragraph 24 above, the AFL was vested with the following powers and responsibilities:
 - (a) as to Players:
 - (i) to determine the terms and conditions upon which persons may play for Clubs (cl 2(d)(ii)); and
 - (ii) to control the activities of Players in any activity associated with football, in particular activities connected with television broadcasting advertising, the writing of articles for newspapers and contributions to publications (cl 2(d)(xii));
 - (b) as to coaches and umpires, to control the activities of coaches and umpires of the AFL in any activity associated with football, in particular activities connected with television broadcasting advertising, the writing of articles for newspapers and contributions to publications (cl 2(d)(xii));
 - (c) as to Clubs:
 - (i) to determine the terms and conditions upon which football matches may be played by Clubs (cl 2(d)(iii)); and

- (ii) to grant, suspend or terminate the right of a Club to representation on the AFL or to relocate or merge any Club (cl 2(d)(xi));
- (d) as to rules:
 - (i) to frame and administer laws relating to football and to take such action as may be necessary to achieve uniformity in such laws (cl 2(d)(iv));
- (e) as to disciplinary matters:
 - (i) to hear and determine upon and settle all questions or disputes on any matter relating to football (cl 2(d)(viii));
 - (ii) to hear and determine any allegation, complaint or charge which may be made or laid against any Club or member, official or Player of a Club involving a breach of the Articles of Association or the rules and regulations of the AFL matches, of the laws relating to football or other rules or regulations relating to the control and management of football matches and competitions whether or not promulgated by the AFL (cl 2(d)(ix)); and
 - (iii) to inflict fines or penalties by way of suspension, expulsion or otherwise on any Club or member, official or Player of a Club for any breach of the Articles of Association or the rules and regulations of the AFL matches, of the laws relating to football or other rules or regulations relating to the control and management of football matches and competitions whether or not promulgated by the AFL (and any decision in respect thereof is final, conclusive and binding and there shall be no appeal from such decision to any Court of Law or otherwise) (cl 2(d)(x));
- (f) as to grounds:
 - (i) to lay out, construct, maintain and alter any ground for football or other sports (cl 2(d)(xxiv)); and
 - (ii) to grant leases or licenses in respect of liquor and other rights at properties under the control of the AFL (cl 2(d)(xli));
- (g) as to television and radio broadcasting and publishing:
 - (i) to purchase or otherwise acquire rights in relation to the reproduction of football matches by film video-tape or by any other mode of reproduction visual or otherwise and to control the sale or hire of such rights including the imposition

of conditions under which such rights are used by the purchaser or hirer (cl 2(d)(xiii));

- (ii) to carry on the business of a radio and/or television broadcasting station for the purpose of broadcasting football matches (cl 2(d)(xiv));
- (iii) to acquire, establish, print and publish newspapers, periodicals, books and leaflets or other literary work that the AFL may think desirable for the promotion of its objects (cl 2(d)(xxxvii)); and
- (iv) to control the use of the Programme of Matches published by the AFL and to take such action as may be necessary from time to time to protect the rights of the AFL in respect of the Programme of Matches (cl 2(d)(xxxviii)).

26. Further, by no later than 1993, under the terms of the Memorandum of Association as pleaded in paragraph 23 above, any income and property derived by the AFL was to be solely applied towards the promotion of the objects of the AFL as set out in the Memorandum of Association.

Particulars

- i. Memorandum of Association cl 4.*

Constitution

27. From around 22 March 2018, the AFL operated under a Constitution (**Constitution**).
28. The Constitution provided that the objects for which the AFL is established include:
- (a) to conduct the football competitions conducted by the AFL including the Australian Rules Football Competition and the AFLW Competition;
 - (b) to promote and encourage football both within Australia and elsewhere; and
 - (c) to promote and encourage football matches both within Australia and elsewhere.

Particulars

- i. Constitution cl 4(a) – (c).*

29. The Constitution provided for an independent Commission consisting of not less than six nor more than nine non-executive Commissioners and executive Commissioners (including a Chief Executive Officer) to manage the business of the AFL.

Particulars

- i. Constitution cl 60.*

30. The Constitution provided *inter alia* that:

- (a) **Appointee** means a representative of a Club admitted to membership of the AFL (cl 1);
- (b) **Life Member** means any person admitted to membership of AFL pursuant to cl 28 (cl 1);
- (c) Appointees who are Members at the time of the adoption of the Constitution shall hold office until their successors have been appointed under the Constitution (cl 14);
- (d) the membership of the AFL shall consist of the Appointees and the Life Members who become members of the AFL in the manner set out in the Constitution (cl 15);
- (e) only the Members who are Appointees shall have the right to vote and, subject to the matters alleged in sub-paragraph (h) below, to be entitled to notice of and to attend meetings as provided in the 2018 Constitution (cl 15);
- (f) each Club will be entitled to nominate one eligible person for membership of AFL as an Appointee (cl 16);
- (g) the Appointees may nominate a person for admission to membership of AFL as a Life Member, the qualification for each of whom shall be that the person has rendered special services to AFL, a League or to football (cl 28); and
- (h) Life Members shall be sent a notice of the annual general meeting of the AFL and shall be entitled to attend the annual general meeting but shall not be entitled to vote at any meetings of AFL (cl 31).

31. Under the terms of the Constitution as pleaded in paragraph 27 above, and for the purpose of carrying out its objects as pleaded in paragraph 28 above, the AFL was vested with the following powers and responsibilities:

- (a) as to Players:
 - (i) to determine the terms and conditions upon which persons may play for Clubs (cl 5(a)); and
 - (ii) control the activities of Players in any activity associated with football in particular activities connected with television and radio broadcasting, other forms of communications, advertising, social media, the writing of articles for newspapers, magazines and websites or other medium and contributions to any other publications (cl 5(k));
- (b) as to coaches and umpires, to control the activities of coaches and umpires in any activity associated with football in particular activities connected with television and radio broadcasting, other forms of communications, advertising, social media, the writing of

articles for newspapers, magazines and website or other medium and contributions to any other publications (cl 5(k));

(c) as to Clubs:

- (i) to determine the terms and conditions upon which football matches may be played by Clubs (cl 5(b));
- (ii) render financial assistance or otherwise assist Clubs (cl 5(e)); and
- (iii) grant, suspend or terminate the right of a Club to representation on the AFL or relocate or merge any Club (cl 5(j));

(d) as to the rules:

- (i) frame and administer laws relating to football and to take such action as may be necessary to achieve uniformity in such laws (cl 5(d));

(e) as to disciplinary matters:

- (i) hear and determine upon and settle all questions or disputes on any matter relating to football (cl 5(g));
- (ii) hear and determine upon any allegation, complaint or charges which may be made or laid against any Club or member, official or Player of a Club or of another league, association or body involving a breach of the Constitution, the rules and regulations of the AFL, the laws relating to football or any other rules or regulations relating to the control and management of football matches and competitions whether or not promulgated by the AFL (cl 5(g)); and
- (iii) impose fines or sanctions, by way of suspension, expulsion or otherwise on any Club or member, official umpire or Player or any official of any Club, for any breach of the Constitution, the rules and regulations of the AFL, the laws relating to football or any other rules or regulations relating to the control and management of football matches and competitions whether or not promulgated by the AFL (and any decision in respect thereof is final, conclusive and binding and there shall be no appeal from such decision to any Court of Law or otherwise) (cl 5(i));

(f) as to grounds:

- (i) lay out, construct, own, operate, lease, maintain and alter any grounds for football or other sports or other events necessary or convenient for the purposes of the AFL (cl 5(w)); and

- (ii) grant leases or licences in respect of liquor and other rights and any other activities at properties under the control of AFL (cl 5(mm));
 - (g) as to television and radio broadcasting and publishing:
 - (i) deal with rights in relation to the visual, audio-visual or audio broadcast, transmission, recording, reproduction or other communication of football matches and related events via television, radio, internet, mobile device or other technology or platform and to control the sale or license of rights to acquired including the imposition of conditions under which such rights are used by a purchaser or licensee (cl 5(l));
 - (ii) carry on the business of broadcasting, transmitting, recording, reproducing or communicating football matches and related events (cl 5(m));
 - (iii) acquire, establish, print and publish newspapers, periodicals, books and leaflets or other literary work or other publications that the AFL may think desirable for the furtherance or promotion of its objects (cl 5(ii)); and
 - (iv) control the use of the program of matches published by the AFL and to take such action as may be necessary from time to time to protect the rights of AFL in respect of the program of matches (cl 5(kk));
 - (h) as to income and property derived by the AFL, to apply it solely towards the promotion and objective of the AFL as set out in the Memorandum of Association (cl 7).
32. Under the terms of the Constitution as pleaded in paragraph 27 above, the Commission was vested with the following powers and responsibilities:
- (a) as to Clubs:
 - (i) to grant an entity the Status of a Club and the right to representation on the AFL subject to the provision that such a decision could be reversed at a general meeting of the AFL where the number of Appointees voting in favour of reversing the decision achieves two-third of all Appointees (cll 24, 27(a));
 - (ii) relocate the playing, administration or social base of a Club or recognise, implement and adopt the merger of two or more Clubs with the consent of the Club or Clubs involved subject to the provision that such a decision could be reversed at a general meeting of the AFL where the number of Appointees voting in favour of reversing the decision achieves two-third of all Appointees (cll 24(a) and (b), 27(b)); and

- (iii) to suspend or terminate the right of a Club to representation on the AFL for a breach of the provisions of its Licence Agreement which give rise to a right of the AFL to appoint an administrator (in the case of suspension) or to terminate such Licence Agreement, subject to a provision that any such decision must be ratified at a general meeting of the AFL on a vote by a simple majority of all Appointees (cll 13, 15(a));
- (b) make, vary, amend, enlarge, revoke and repeal rules, regulations and by-laws ancillary to but not inconsistent with the Constitution in respect of any matter whatsoever (cl 84);
- (c) save for the powers required to be exercised by the AFL in general meeting, exercise all of the powers of the AFL in respect of any matter whatsoever, including the power to make rules, regulations and by-laws (cl 85); and
- (d) add to, alter or rescind any rules, regulations and by-laws as it thinks fit (cl 86).

B2. Rules and disciplinary matters

33. From:

- (a) the start of the Relevant Period to 23 January 1990, the VFL; and
- (b) 24 January 1990 to the end of the Relevant Period, the AFL—

set and administered the laws, rules and regulations of the football matches played in the Australian Rules Football Competition (**the Rules**).

Particulars

- i. *The Laws of the Australian National Game of Football (1944) (**Laws of the Game (1944)**)*.
- ii. *The VFL 77th Annual Report for the season 1973 refers to amendments to the Laws of the Game which was considered by the VFL Board and adopted by all relevant affiliated bodies for season 1973 (p 15).*
- iii. *The Laws of the Game as at 1978 set out in B. Hogan 'Follow the Game – explanations and interpretations of the laws of Australian Football' (**Laws of the Game (1978)**) at p 103 ff.*
- iv. *The Annual Report for the season 1976 refers to a proposal to amend the Laws of the Game to permit Leagues at their discretion to appoint either one or two field umpires (p 12).*
- v. *The Laws of the Game as at 1983 set out in B. Hogan 'Follow the Game – explanations and interpretations of the laws of Australian Football' (**Laws of the Game (1983)**) at p 117 ff.*

- vi. *The Laws of the Game as at 2022 (**Laws of the Game (2022)**) provide that the AFL is a controlling body for the purposes of the Laws of the Game.*
- vii. *Further particulars may be provided following discovery.*

34. The Rules as set and administered by the VFL or AFL (as applicable) provided for:

- (a) the rules as to the size of the playing ground, and distance between the goal and behind posts;
- (b) the rules as to the number of Players in a team and the number of Players who may take part in a football match at any one time;
- (c) the rules as to the length of time of match play;
- (d) the rules as to when and how the football match is to be conducted;
- (e) the appointment and powers and duties of field, goal and boundary umpires;
- (f) the rules as to when conduct by Players will constitute a **Reportable Offence**; and
- (g) when and how Players are to be reported to the VFL and AFL (as applicable) by umpires and match officials for Reportable Offences.

Particulars

- i. *As to (a), Laws of the Game (1944) cl 2, Laws of the Game (1978) cl 1; Laws of the Game (1983) cl 1; Laws of the Game (2022) cl 3.*
- ii. *As to (b), Laws of the Game (1944) cl 3(a)(b); Laws of the Game (1978) cl 3, Laws of the Game (1983) cl 1; Laws of the Game (2022) cl 5.*
- iii. *As to (c), Laws of the Game (1944) cl 5(i), Laws of the Game (1978) cl 24, 25; Laws of the Game cll 24, 25; Laws of the Game (2022) cl 10.*
- iv. *As to (d), Laws of the Game (1944) cll 13 to 17; Laws of the Game (1978) cll 7 to 14, 17 to 18; Laws of the Game (1983) cl 7 to 14, 17 to 18; Laws of the Game (2022) Part D.*
- v. *As to (e), Laws of the Game (1944) cll 27 to 47, 49, 53 to 77; Laws of the Game (1978) cll 23, 31; Laws of the Game (2022) cl 8.*
- vi. *As to (f), Laws of the Game (1944) cl 48; Laws of the Game (1978) cl 28; Laws of the Game (1983) cl 28; Laws of the Game (2022) cl 22.1.*
- vii. *As to (g) Laws of the Game (1944) cll 23(ii), 33, 41, 47, 48, 49, 61, 62, 74 and 75; Laws of the Game (1978) cl 29; Laws of the Game (1983) cl 29; Laws of the Game (2022) cl 22.2.*

35. Throughout the Relevant Period, the Rules applied to all matches of Australian Rules Football organised and conducted by the VFL or AFL (as applicable).

Particulars

- i. *The particulars subjoined to paragraph 33 above are repeated.*
- ii. *Further particulars may be provided following discovery.*

36. Throughout the Relevant Period, the Rules included a prohibition on the use of abusive, threatening or insulting language or behaviour by Players against umpires or other Players during the progress of the football match or within the oval on the day of the match (**Conduct Rule**).

Particulars

- i. *The Laws of the Australian National Game of Football (1944) provide that the field umpire shall in every case, and without taking into consideration any question as to whether the offending player has received provocation or not, report to the controlling body every player who unduly interferes with or assaults, or uses abusive, threatening or insulting language or behaviour towards him during the progress of the game, or within or without the oval on the day of the match. Those laws also provided for a reporting mechanism where a player assaulted another player or used abusive, threatening or insulting language or otherwise misconducts himself during the progress of the game, or within the oval on the day of the match (cl 48(f) – (h)).*
- ii. *The Laws of the Game (1978) contained a prohibition at cl 28 in substantially similar terms as set out in particular (i) as set out in B. Hogan ‘Follow the Game – explanations and interpretations of the laws of Australian Football’ at p 111.*
- iii. *The Laws of the Game (1983) contained a prohibition at cl 28 in substantially similar terms as set out in particular (i) as set out in B. Hogan ‘Follow the Game – explanations and interpretations of the laws of Australian Football’ at p 125.*
- iv. *The Laws of the Game (2022) provide that the use of abusive, insulting, threatening or obscene language or the use of an obscene gesture is a reportable offence (cl 22.2.2(v) and (w)).*
- v. *Rule 34 of the AFL Rules as at 28 February 2023 contains a prohibition on anyone subject to those rules acting in a threatening or aggressive manner towards any other person or an umpire on or about the arenas prior to, during and following the completion of a match.*
- vi. *Further particulars may be provided following discovery.*

37. Throughout the Relevant Period, breach of the Conduct Rule by a Player constituted a Reportable Offence under the Rules as in force from time to time.

Particulars

- i. Laws of the Game (1944) cl 48.*
- ii. Laws of the Game (1978) cl 28.*
- iii. Laws of the Game (1983) cl 28.*
- iv. Laws of the Game (2022) cl 22.2.2 (v) and (w).*

38. Further, at all material times since 30 June 1995, the Rules have prohibited Players and directors, officers, servants or agents of Clubs (including coaches, assistant coaches, trainers, medical officers and runners) from acting towards or speaking to any other person in a manner, or engaging in any conduct which threatens, disparages or vilifies or insults another person on the basis of that person's race, religion, colour, descent or national or ethnic origin (**Racial Vilification Rule**).

Particulars

- i. Rule 30 was introduced in 1995 and subsequently amended in 1997.*
- ii. It was renumbered rule 35 in around 2013 and became known as the "Peek Rule".*

39. From 30 June 1995 until the end of the Relevant Period, breach of the Racial Vilification Rule by a Player constituted a Reportable Offence under the Rules as in force from time to time.

Particulars

- i. Laws of the Game (2022) cl 22.2.2(v) provides that using abusive, insulting, threatening or obscene language constitutes a Reportable Offence. Cl 22.2.2 (w) provides using an obscene gesture constitutes a Reportable Offence.*
- ii. Further particulars may be provided following discovery.*

40. From:

- (a) the start of the Relevant Period to 23 January 1990, the VFL; and
- (b) 24 January 1990 to the end of the Relevant Period, the AFL—

selected and appointed umpires and match officials to officiate football matches played in the Australian Rules Football Competition.

Particulars

- i. The VFL 84th Annual Report for the season 1980 refers to the VFL's Umpire Control Board which was responsible for the*

appointment of umpires to VFL matches during the season (p 38).

- ii. *The VFL's Annual Report for the season 1985 contains a report from the Director of Umpiring regarding the selection of umpires in the season (at p 26).*
- iii. *The VFL's Annual Report for the season 1988 contains a report from the Director of Umpiring regarding the National Umpiring Structure and a recruiting drive (p 15).*
- iv. *The AFL's Annual Report for the season 1993 contains a report from the National Director of Umpiring refers to a total of 29 umpires being selected in the AFL competition (p 31).*
- v. *The AFL's Annual Report for the season 1998 refers to the AFL Umpiring Selection Committee as part of the AFL administration in 1998 (p 15).*
- vi. *The AFL's Annual Report for the season 2003 lists the AFL Field Umpires' Senior Panel for 2003 (p 35) and a list of match payments to umpires in that year (p 34).*
- vii. *The AFL's Annual Report for the season 2008 lists the AFL field umpires for 2008 (p 56).*
- viii. *The AFL's Annual Report for the season 2013 refers to the AFL's Umpiring Department and the appointment of a National Umpire Development Manager (p 46).*
- ix. *The AFL's Annual Report for the season 2018 refers to the AFL's Umpiring Department (p 40).*
- x. *The AFL's Annual Report for the season 2022 refers to the AFL's Umpiring Department (p 43).*
- xi. *Further particulars may be provided following discovery.*

41. From:

- (a) the start of the Relevant Period to 23 January 1990, the VFL; and
- (b) from 24 January 1990 until the end of the Relevant Period, the AFL—

umpires and match officials were required under the Rules to report to the VFL or AFL (as applicable) Players who were in breach of the Conduct Rule and, after 30 June 1995, the Racial Vilification Rule.

Particulars

- i. *Laws of the Game (1944) cll 48 and 49*
- ii. *Laws of the Game (1978) cll 28 and 29.*
- iii. *Laws of the Game (1983) cll 28 and 29.*
- iv. *Laws of the Game (2022) cll 22.2 and 22.3.*
- v. *Peek Rule r 30(b); r 30.2.*

42. From:

- (a) the start of the Relevant Period to 23 January 1990, the VFL; and
- (b) from 24 January 1990 until the end of the Relevant Period, the AFL—

had in place a **Disciplinary Tribunal** constituted from time to time which was empowered to:

- (i) hear and determine complaints against Players for breach of the Rules; and
- (ii) impose fines or sanctions on Players for breach of the Rules, including the Conduct Rule and, after 30 June 1995, the Racial Vilification Rule.

Particulars

- i. *So far as the plaintiffs can say prior to discovery, the plaintiffs refer to:*
 - A. *The VFL 75th Annual Report for the season 1971 (p 14) refers to the Tribunal as constituted by, inter alios, the President of the VFL.*
 - B. *The VFL 77th Annual Report for the season 1973 (p 20) refers to the Tribunal as constituted by, inter alios, the President of the VFL.*
 - C. *The VFL 81st Annual Report for the season 1977 (p 19) states that the Tribunal was called on 20 occasions during season 1977 to hear 37 charges against Players.*
 - D. *The VFL 85th Annual Report for the season 1981 (p 34) refers to the members of the Special Tribunal which was required to hear 51 cases over the season.*
 - E. *The VFL Annual Report for the season 1985 refers (p 9) to the members of the Tribunal – Senior.*
 - F. *The VFL Annual Report for the season 1988 refers (p 19) to the members of the Tribunal – Senior.*
 - G. *Peek Rule r 30; r 35.*
- ii. *The plaintiffs refer to and repeat paragraphs 25(e) and 31(e) above.*
- iii. *Further particulars may be provided following discovery.*

43. Further, at all times since 30 June 1995, any complaint that a Player had contravened the Racial Vilification Rule was to be dealt with as follows:

- (a) the designated Complaints Officer at the Commission shall refer the complaint to conciliation; and

- (b) where the Complaints Officer is of the opinion that the matter has not been resolved by conciliation, the Complaints Officer shall in the case of a Player, refer the complaint to the Disciplinary Tribunal for hearing and determination.

Particulars

- i. Peek Rule r 30; r 35.*

44. Further, at all times since 30 June 1995, any complaint that a person bound by the Rules (not being a Player) had contravened the Racial Vilification Rule was dealt with as follows:

- (a) the designated Complaints Officer at the Commission shall refer the complaint to conciliation; and
- (b) where the Complaints Officer is of the opinion that the matter has not been resolved by conciliation, the Complaints Officer shall refer the complaint to the Commission, later, to the Disciplinary Tribunal, for hearing and determination.

Particulars

- i. So far as the plaintiffs can say prior to discovery, r 30(d)(ii) as in force at 30 June 1995 provided that in the case of any other person not being a Player, the complaint was referred to the Commission to be dealt with under Rule 10 of the AFL Rules and Regulations. The rule as in force at March 2001 contained a materially similar provision in rule 30.8(ii). The Rule as at 28 February 2023 provide that the complaint is to be referred to the Disciplinary Tribunal in r 35.12. Prior to discovery, the plaintiffs cannot say when the rule changed.*
- ii. Further particulars may be provided following discovery.*

B3. Players

45. By no later than 1972:

- (a) a Player could not participate in the Australian Rules Football Competition with a Club unless he held a permit to play in the Australian Rules Football Competition on the terms issued and approved by the VFL; and
- (b) having been granted a permit to play with a Club, the Player was deemed to become a Player of the VFL and a Player of the Club.

Particulars

- i. The VFL 76th Annual Report for the season 1972 refers (p 25) the VFL Board approving alterations to Permit Regulations.*

- ii. *The VFL 77th Annual Report for the season 1973 refers (p 22) to amendments to Permit Regulations.*
- iii. *The VFL 85th Annual Report for the season 1981 records (p 21) that the VFL Board of Directors amended the Permit Rules (retrospective to 1 March 1981).*
- iv. *Foschini v AFL (Unreported, Supreme Court of Victoria, 15 April 1983, Crocket J).*
- v. *Further particulars may be provided following discovery.*

46. Further, from no later than 12 December 1984, the VFL and AFL (as applicable) set and determined the terms and conditions upon which persons may play for Clubs.

Particulars

- i. *1984 Articles of Association, as pleaded in paragraph 19(a) above.*
- ii. *Memorandum of Association cl 2(d)(ii), as pleaded in paragraph 25(a)(i) above.*
- iii. *Constitution cl 5(a), as pleaded in paragraph 31(a)(i) above.*

47. Prior to the commencement of the 1975 playing season, the VFL Board put in place insurance arrangements to provide Players with Personal Accident Insurance for Death, Total Permanent Disablement, Loss of Sight and Loss of Limbs which covered training, match playing and travelling to and from VFL matches, training sessions and official Club functions.

Particulars

- i. *The VFL 79th Annual Report for the season 1975 states that a decision was made prior to the commencement of season 1975 to provide Personal Accident Insurance for VFL Players. The basic cover provided by the policy was cover of \$50,000 per player for contingencies such as Death, Total Permanent Disablement, Loss of Sight, Loss of Limbs. The insurance applied to all Senior and Reserve Grade Players, whether training, playing in matches, and extended to any person invited to train with Senior and Reserve Grade squads. Players were also covered for travelling to and from VFL matches, training sessions and official Club functions. The report states that “[t]he VFL Board will continue to examine further proposals with a view to extensions to the scope of the existing policy” (p 18).*
- ii. *Further particulars may be provided following discovery.*

48. By no later than 1970 until around 1980, the VFL made payments to a **Players' Provident Fund** for the benefit of Players, the object of which was to provide monetary payments to Players upon ceasing their VFL careers.

Particulars

- i. *The VFL 74th Annual Report for the season 1970 states that the League allocated the net proceeds received from the public count of the Brownlow Medal to the Players' Provident Fund and enabled the credit per player per match to be lifted from \$10 to \$12. The control of the operation of the Player Provident Fund was vested in the Trustees, which included, inter alios, the President of the VFL, Sir Kenneth Luke who had acted as a Trustee since the inception of the fund in 1946. The report records the VFL's contribution to the fund was \$44,000 (p 20).*
- ii. *The VFL 75th Annual Report for season 1971 states that the League's gross receipts from the telecast of the Brownlow Medal count were allocated to the Players' Provident Fund (p 18).*
- iii. *The VFL 77th Annual Report for season 1973 states that the fund income included a VFL contribution of \$55,000 (p 20).*
- iv. *The VFL 78th Annual Report for season 1974 refers to the establishment of the Players Provident Fund on the terms alleged (p 31). The report states that the income of the fund included a contribution by the VFL of \$50,000 (p 20).*
- v. *The VFL 79th Annual Report for the season 1975 refers to the increases in fund income made it possible for the VFL Board and the trustees of the fund to increase the payment to the fund from \$18 per player per match to \$21 per player per match (p 18). The report states that \$60,000 comprising First Round Match Receipts was also paid to the fund (p 18).*
- vi. *The VFL 84th Annual Report for the season 1980 states that in 1980, the VFL Board of Directors resolved to wind up the Players' Provident Fund (p 38).*

49. At all times throughout the Relevant Period, Players were paid for playing football matches in the Australian Rules Football Competition.

Particulars

- i. *The VFL 84th Annual Report for the season 1980 records the basic annual match payments for each VFL match played as \$120 (1-99 matches), \$200 (100-199 matches) and \$300 (200 matches and over) (p 37).*
- ii. *The VFL 84th Annual Report for the season 1980 (p 36) states that in the season 1980, the VFL Board of Directors introduced Rule 11 which related to payments to Players. Players were required to enter into a contract of service with*

their Club and the contracts lodged with the Players' Payment Commissioner. The basic annual salary for Players was established by the allocation of points by the Payment Commissioner with each point having a value of \$80, with bonus allocations available (including for Captaincy and Vice-Captaincy).

iii. Further particulars may be provided following discovery.

50. From around 1980, the VFL made rules with respect to and determined and set the Player's match payments, being a monetary sum to be paid to each Player for each football match played in the Australian Rules Football Competition.

Particulars

i. The plaintiffs refer to the particulars to paragraph 49 above.

51. In or around 1987, the VFL introduced a "salary cap", being the maximum total amount of money paid by the VFL to Clubs on account of the Club's payments to Players.

Particulars

i. In his book "The Phoenix Rises", Ross Oakley, who was appointed Chairman of the VFL (and later, CEO of the AFL) describes the introduction of the salary cap in 1987 as part of an equalisation strategy and cost-containment policy which was designed to neutralise the ability of the richest and most successful Clubs to dominate the competition (p 81).

ii. Further particulars may be provided following discovery.

52. From:

- (a) 1988 to 23 January 1990, the VFL; and
- (b) 24 January 1990 to until at least 2022, the AFL—

entered into standard player contracts (SPCs) with Players and their respective Clubs, pursuant to which the VFL or AFL (as applicable) and the Club contracted the Player to play in the Australian Rules Football Competition on the terms and conditions set out in the SPC.

Particulars

- i. The SPCs are in writing.*
- ii. The VFL 92nd Annual Report for the 1988 season states that SPCs were introduced in season 1988 after a period of negotiation with the VFL Players' Association (p 10).*
- iii. In his book "The Phoenix Rises", Ross Oakley, who was appointed Chairman of the VFL (and later, CEO of the AFL) describes the introduction of the SPC in or around 1988,*

which all players were required to execute and lodge copies of with the executive Commissioner of the League. He states that it was a tripartite contract involving the Player, the Club and the League. He states “We wanted the club to be the player’s employer, but the contract gave us more control. Each contract contained a clause whereby the player agreed to an assignment by the club of the player’s contract to the VFL in the effect of a default by the club in any of its obligations pursuant to the conditions of the licence agreement. It locked both club and player to the League, which meant we could be well and truly protected from invaders and would have the necessary control over our constituents” (p 76).

- iv. The plaintiffs refer to the Collective Bargaining Agreements in place between 2004 and 2022 which inter alia provided that all contracts for the playing of AFL entered into between a Player who is an AFLPA members, a Club and the AFL shall be in the form of the “Standard Playing Contract”.*
- v. Further particulars may be provided following discovery.*

53. From no later than 1989 there were terms of the SPCs which:

- (a) provided that the Player and the Club agree to comply with and observe the rules and regulations of the VFL or AFL (as applicable), the AFL, the Player Rules, the Memorandum and Articles of Association and any determinations or resolutions of the Commission (cl 7); and
- (b) contained an acknowledgment by the Player of the VFL or AFL (as applicable) rules and regulations restricting the freedom of players to transfer from one Club to another and restricting the total football payments that a Club may give to or apply for the benefit of its players Clubs (cl 7).

54. On 6 November 1995, the AFL and the AFL Players Association (**AFLPA**) entered into a Collective Bargaining Agreement (**CBA**).

Particulars

- i. The Collective Bargaining Agreement is in writing and dated 6 November 1995.*

55. At all material times throughout the Relevant Period, the AFLPA is and was the official representative body for Players.

Particulars

- i. The AFLPA was established in 1973.*
- ii. It is a public company limited by guarantee.*

56. There were terms of the CBA that:

- (a) the term of the agreement was for a period of three years commencing on 1 November 1995 (Schedule A cl 19);
- (b) the Clubs were to be bound by the terms of the CBA (Recital B, Schedule A cl 2);
- (c) the minimum terms and conditions of employment of Players who are AFLPA members set out in Schedule A to the CBA have been agreed by the parties and will be applied by the AFL for the period of operation specified in Schedule A to the CBA to all players employed by a Club who are AFLPA members (cl 1);
- (d) the AFLPA agrees that a Club may negotiate individual contracts with its Players provided that all contracts for players participating in the AFL Competition shall be in the form agreed between the AFL and AFLPA from time to time (cl 2);
- (e) the parties agree that the minimum terms and conditions of employment set out in Schedule A shall apply to and be incorporated into any existing or future employment contract between the AFL, Club and a Player who is an AFLPA member. The provisions of the CBA shall have primacy over any inconsistent provision in an individual player contract save that such a contract may contain benefits inconsistent with the CBA only to the extent that such benefits to a player are greater than the minimum set out in Schedule A (cl 3); and
- (f) set out the minimum benefits of employment as to minimum base salary, relocation expenses, injury and illness payments, termination payments, annual leave, and health insurance benefits for Players who are AFLPA members (Schedule A).

57. On and from November 1995 until at least 2022, CBAs as between the AFL and the AFLPA have been in place and have contained terms:

- (a) to bind the Clubs to the CBAs;
- (b) to establish the minimum terms and conditions of employment applying to all Players who are AFLPA members employed by Clubs during the term of the CBA;
- (c) to set out the minimum benefits of employment as to minimum base salary, relocation expenses, injury and illness payments, medical payments, termination payments, annual leave, and health insurance benefits to those Players who are AFLPA members;
- (d) to set the total payments and benefits to be made and provided to Players who are AFLPA members by the AFL and Clubs;

- (e) to set the total player payments for each Club, being the maximum amounts per year paid to Clubs for the benefit of Players who are AFLPA members with each Club; and
- (f) to require the AFL to make payments to a fund established for the welfare of Players who are AFLPA members, the purpose of which is to provide educational, training, welfare and retirement benefits to Players.

Particulars

- i. *Collective Bargaining Agreement dated 6 November 1995 for the period 1995 to 1998.*
- ii. *Collective Bargaining Agreement dated March 2004 for the period 1 November 2003 until 31 October 2008.*
- iii. *Undated Collective Bargaining Agreement for the period 2007 to 2011.*
- iv. *Undated Collective Bargaining Agreement for the period 2012 to 2016.*
- v. *Undated Collective Bargaining Agreement for the period 2015 to 2016.*
- vi. *Undated Collective Bargaining Agreement for the period 2017 to 2022.*
- vii. *Further particulars may be provided following discovery.*

58. Further, from at least November 2003 until 2022, it was a term of the CBA in place from time to time that:

- (a) Players bound by the CBA must not participate in or be involved in any other Australian Football competition without approval of the AFL; and
- (b) Players bound by the CBA shall be available to participate in bona fide appearances for the promotion of the AFL.

Particulars

- i. *Collective Bargaining Agreement dated March 2004 for the period 1 November 2003 until 31 October 2008 (cl 7, 21.1(a)).*
- ii. *Undated Collective Bargaining Agreement for the period 2007 to 2011 (cl 7, cl 21.1(a)).*
- iii. *Undated Collective Bargaining Agreement for the period 2012 to 2016 (cll 7, 26.1(a)).*
- iv. *Undated Collective Bargaining Agreement for the period 2015 to 2016 (cll 7, 24.1(a)).*
- v. *Undated Collective Bargaining Agreement for the period 2017 to 2022 (cll , 7, 24.1(a)).*

- vi. *Further particulars may be provided following discovery.*

B4. Clubs

59. From 12 December 1984 to the end of the Relevant Period, the VFL and AFL (as applicable) set and determined the terms and conditions upon which football matches may be played by Clubs.

Particulars

- i. *1984 Articles of Association, as pleaded in paragraph 19(b)(iv) above.*
- ii. *Memorandum of Association cl 2(d)(iii), as pleaded in paragraph 25(c)(i) above.*
- iii. *Constitution cl 5(b), as pleaded in paragraph 31(c)(i) above.*

60. From:

- (a) no later than 1985 until 23 January 1990, the VFL; and
- (b) 24 January 1990 to the end of the Relevant Period, the AFL—

granted licenses to Clubs and set the terms and conditions of those licenses pursuant to which Clubs were given the right to field teams in the Australian Rules Football Competition.

Particulars

- i. *The VFL Annual Report for the season 1985 (p 5) refers to the introduction of a licensing agreement which was accepted by all 12 Clubs before the year expired. The agreement contained an acknowledgement by the Clubs that they will abide by the VFL's rules and regulations.*
- ii. *In his book "The Phoenix Rises", Ross Oakley, who was appointed Chairman of the VFL (and later, CEO of the AFL) describes the introduction of the licences in or around 1985 and states the "[t]he individual clubs needed to acknowledge that they were franchises of a game that was administered centrally by a League controlled by a commission with due authority to make decisions on behalf of and in the interests of the code" (p 73). He describes the terms of the licenses as containing provisions transferring the intellectual property of Clubs to the VFL (p 74). He states "If the commission were to have the necessary authority to administer the League, then the most valuable properties in football – its most fundamental constituent parts – needed to be controlled by the commission, and therefore, the League. There was no point in having a licence or franchise arrangement with a commercial entity of a club if the things that made up that club's identity as far as the supporters were concerned were not also vested in the League. The League had to own the colours, the jumpers, the names" (p 75).*

- iii. *The plaintiffs refer to the SPCs as defined in paragraph 52 above which contain an acknowledgement that the Club has a right to field teams in the VFL Competition pursuant to the terms and conditions of a licence granted to the Club by the VFL.*
- iv. *Further particulars may be provided following discovery.*

B5. Football matches, spectators and grounds

61. From:

- (a) the start of the Relevant Period to 23 January 1990, the VFL; and
 - (b) 24 January 1990 to the end of the Relevant Period, the AFL—
- conducted football matches played in the Australian Rules Football Competition at:
- (i) Melbourne Cricket Ground (**MCG**), at Jolimont in the State of Victoria;
 - (ii) **VFL Park**, at Mulgrave in the State of Victoria;
 - (iii) Docklands Stadium (also known as **Marvel Stadium**), at Docklands in the State of Victoria;
 - (iv) Princes Park, at Carlton in the State of Victoria;
 - (v) Victoria Park, in Collingwood in the State of Victoria;
 - (vi) Windy Hill, at Essendon in the State of Victoria;
 - (vii) Kardinia Park (also known as GMHBA Stadium), in Geelong in the State of Victoria;
 - (viii) Moorabbin Oval, in Moorabbin in the State of Victoria;
 - (ix) Western Oval (also known as Whitten Oval), in Footscray in the State of Victoria;
 - (x) Arden Street Oval, in North Melbourne in the State of Victoria;
 - (xi) Junction Oval, in St Kilda in the State of Victoria;
 - (xii) Lake Oval, in Albert Park in the State of Victoria;
 - (xiii) Eureka Stadium (also known as Mars Stadium), in Wendouree in the State of Victoria;
 - (xiv) Sydney Cricket Ground, in Moore Park in the State of New South Wales;

- (xv) Sydney Showground Stadium (also known as ENGIE Stadium), at Sydney in the State of New South Wales;
- (xvi) Stadium Australia, at Sydney in the State of New South Wales;
- (xvii) Brisbane Cricket Ground, at Woolloongabba in the State of Queensland;
- (xviii) Carrara Stadium (also known as Peoples First Stadium), at Carrara in the State of Queensland;
- (xix) Adelaide Oval, in North Adelaide in the State of South Australia;
- (xx) Football Park (also known as AAMI Stadium) in West Lakes, in the State of South Australia;
- (xxi) Manuka Oval, in Griffith in the Australian Capital Territory;
- (xxii) Bellerive Oval (also known as Ninja Stadium), in Bellerive in the State of Tasmania;
- (xxiii) York Park (also known as UTAS Stadium), in Launceston in the State of Tasmania;
- (xxiv) Marrara Stadium (also known as TIO Stadium), in Darwin in the Northern Territory;
- (xxv) Traeger Park Oval, in Alice Springs in the Northern Territory;
- (xxvi) Subiaco Oval, in Subiaco in the State of Western Australia;
- (xxvii) Optus Stadium, in Burswood in the State of Western Australia; and
- (xxviii) WACA Stadium, in Perth in the State of Western Australia—
(collectively, **Grounds**).

62. From:

- (a) no later than 1984 until 23 January 1990, the VFL; and
- (b) 24 January 1990 to the end of the Relevant Period, the AFL—

set, determined, negotiated and scheduled at which Grounds the football matches were conducted as part of the Australian Rules Football Competition would take place.

Particulars

- i. *The VFL 88th Annual Report for the season 1984 states that the VFL Board of Directors agreed to four home matches being transferred from Arden Street to the MCG (p 10). The*

report states that North Melbourne Football Club sought the VFL's approval to transfer its home ground to the MCG when the stadium was vacant (p 10).

- ii. *The AFL Annual Report for the season 1993 refers to the Commission (in 1986) rescheduling a number of matches to the MCG and VFL Park (p 43).*
- iii. *In his book "The Phoenix Rises", Ross Oakley, who was appointed Chairman of the VFL (and later, CEO of the AFL) describes personally making decisions to schedule matches away from Victoria Park to the MCG (at p 186). He describes stating to the (then) Collingwood President that he permitted Collingwood to play five matches at Victoria Park (p 187). He describes moving Carlton from Princes Park and permitting matches to be played at Princes Park (p 187). He describes a key strategic priority to reduce the number of suburban grounds and to find ways to increase the number of games played at the MCG or VFL Park (p 185). Mr Oakley does not specify the time at which these events occurred, however he was Chairman of the VFL from around 1986 to around 1990, later Chairman of the AFL from around 1990 to around 1993 and CEO of the AFL from around 1993 to around 1996 and it may therefore be inferred that the events occurred between 1986 and 1996.*
- iv. *The AFL Annual Report for the season 1999 refers to the AFL's decision not to schedule matches at Waverly Park (p 23). The report refers to the policy of the Commission to schedule AFL matches in new markets to give supporters an opportunity to watch live matches (p 72).*
- v. *The AFL Annual Report for the season 2005 refers to the AFL concluding an agreement with the MCG regarding the scheduling of finals at the MCG (p 26).*
- vi. *The AFL Annual Report for the season 2010 refers to the AFL entering into arrangements for the scheduling of football matches on the Gold Coast, Sydney Showgrounds and Cairns (p 61).*
- vii. *Further particulars may be provided following discovery.*

63. By around 1970, the VFL had purchased land and established, owned, operated and improved the football stadium and grounds known as VFL Park for the purpose of conducting the Australian Rules Football Competition.

Particulars

- i. *The balance sheet as at 30 November 1971 at p 21 of the VFL Annual Report for the season 1971, lists, under the heading "fixed assets", VFL Park with land at cost valued at \$433,671, construction costs at cost valued at \$3,064,648 and fixtures and equipment (at costs less depreciation) valued at \$35,066. The balance sheet records capital expenditure*

commitments relating to outstanding contracts for construction of VFL Park valued at \$29,640.

- ii. *The VFL 85th Report for the 1981 season (p 6) states that the VFL Board of Directors decided to erect a video matrix screen and scoreboard at a cost of \$2.3 million., and \$130,000 was expended on a ground resurfacing project. In 1980, the VFL self-funded an expansion project to increase the capacity of the grounds (pp 7, 33).*
- iii. *AFL, '100 Years of Australian Football' Penguin Books Australia (1996) states (p 252) that VFL Park was specifically designed and built for the VFL game and had room for 70,000 patrons.*
- iv. *Further particulars may be provided following discovery.*

64. In around 1973, the VFL Board of Directors resolved to establish a fund to provide monies to facilitate improvement works to Club football grounds and facilities (excluding the MCG and VFL Park) (**Ground Improvement Fund**).

Particulars

- i. *The VFL 77th Annual Report for the season 1973 (p 11).*
- ii. *Further particulars may be provided following discovery.*

65. The terms of reference for the operation of the Ground Improvement Fund provided, *inter alia*:

- (a) the VFL Board of Directors is to approve plans for improvements, costs estimates and final tender; and
- (b) the VFL is to make payments for work directly to contractors or where utilised for servicing of loans to the lender.

Particulars

- i. *The particulars subjoined to paragraph 64 above are repeated.*

66. Further, in connection with the establishment of the Ground Improvement Fund as pleaded in paragraph 64 above, in or around 1973, the VFL Board of Directors adopted guidelines whereby the VFL would act as guarantor up to a period of 15 years and to a limit of \$200,000 for each Club football ground and facility, in respect of loans raised for the specific purpose of effecting approvals.

Particulars

- i. *The particulars subjoined to paragraph 64 above are repeated.*

67. From around 1974, the VFL Board determined to distribute a portion of admission fees paid by patrons attending VFL matches (**Admission Fees**) to the Ground Improvement Fund.

Particulars

- i. *The VFL 78th Annual Report for the season 1974 (p 17) states that the allocation to the Ground Improvement Fund continued in respect of Admission Fees at the MCG with surcharges as determined by the League credited to the fund,*
- ii. *The VFL Annual Report for the season 1976 (p 19) refers to a decision by the VFL Board of Directors to substantially increase ground Improvement Fund surcharges for both first round and finals series matches “resulted in a massive injection of funds in Season 1976”.*
- iii. *At the time of the determination of prices for the 1976 finals series, the VFL Board of Directors adopted the principle of allocating 50% of the increase in the price of tickets to the Ground Improvement Fund.*
- iv. *Further particulars may be provided following discovery.*

68. In or around 1973, the VFL established non-drinking areas at all grounds where the Australian Rules Football Competition was conducted.

Particulars

- i. *So far as the plaintiffs can say prior to discovery, the plaintiffs refer to the VFL 77th Annual Report for the season 1973 which states that the VFL and ground managers introduced “non-drinking areas” at all grounds and agreed that consideration be given to the desirability of extending the areas and to all matters related to further improving the designation and control of the non-drinking areas (p 15).*
- ii. *Further particulars may be provided following discovery.*

69. In or around 1982, the VFL prohibited alcoholic beverages brought from outside premises from being taken inside grounds where the Australian Rules Football Competition was conducted.

Particulars

- i. *So far as the plaintiffs can say prior to discovery, the plaintiffs refer to the VFL 86th Annual Report for the 1982 season (p 3) which states “[o]ne of the most far-reaching decisions of year was the introduction of a ban on alcohol being taken into VFL matches. The ban was introduced on May 8 and operated successfully throughout the season”.*
- ii. *Further particulars may be provided following discovery.*

70. In or around 1988, the VFL introduced enhanced security measures at all Grounds following incidents of crowd behaviour at Grounds before and after football matches played in the Australian Rules Football Competition.

Particulars

- i. *So far as the plaintiffs can say prior to discovery, the plaintiffs refer to the VFL 92nd Annual Report for the season 1988 (p 12) which states “[g]reater security was introduced at all VFL grounds following some unfortunate incidents, particularly in the chaos which reigned at Carrara Oval when the Bears defeated Footscray by one point and the Bulldogs’ full-forward ... had a kick after the siren with hundreds of people on the ground surrounding him. The viewing of on-field incidents by the VFL Commissioners increased. Much publicity was expended on the so-called ‘trial by media’. As the season progressed these investigations were carried out with expediency in an attempt to reduce the media hype.”*
- ii. *Further particulars may be provided following discovery.*

Terms and conditions of ticket holders

71. From a date prior to or during the Relevant Period which is not known to the plaintiffs but known to the AFL, the AFL set and determined the general conditions of entry to grounds upon which spectators would be and were permitted to enter stadiums and grounds, and the terms upon which those spectators could be removed, banned or disqualified from purchasing tickets to matches and/or entering stadiums or grounds where the Australian Rules Football Competition was conducted.

Particulars

- i. *The terms and conditions are in writing.*
- ii. *Copies of the terms and conditions in force in 2022 are in the possession of the solicitors for the plaintiffs.*
- iii. *Further particulars may be provided following discovery.*

Ownership of Marvel Stadium

72. At all times from 17 November 2016, the AFL has been the registered proprietor of the land and dwellings known as Marvel Stadium for the purpose of conducting football matches as part of the Australian Rules Football Competition.

Particulars

- i. *The AFL is listed as the sole proprietor in fee simple in respect of Lot 2 on Plan of Subdivision 434050P also known as Marvel Stadium.*

- ii. *Further particulars may be provided following discovery.*

B6. Branding and insignia

Branding and insignia

73. In December 1971, the VFL Board of Directors resolved to establish the VFL Properties Division:

- (a) to control how Australian Rules Football insignia was to be registered as trademarks; and
- (b) to prepare licensing agreements for the use and protection of the Australian Rules Football and Club insignia.

Particulars

- i. *So far as the plaintiffs can say prior to discovery, the plaintiffs refer to:*
 - A. *The VFL 75th Annual Report for the season 1971 (p 14) which refers to the establishment of the VFL Properties Division on the terms described.*
 - B. *The VFL 76th Annual Report for the season 1972 (p 12) which states that the object of the Properties Division was “to obtain income from the granting of licences for the use of the VFL and Club emblems, in association. with selected products, and to advance the image of football to the general public”.*
 - C. *The VFL 77th Annual Report for the season 1973 (p 15) refers to the establishment of an executive committee of the VFL Properties Division to assist with the objective of obtaining “income from the granting of licences for the use of the VFL and Club emblems”.*
- ii. *Further particulars may be provided following discovery.*

74. From:

- (a) around 1975 to 23 January 1990, the VFL; and
- (b) 24 January 1990 to the end of the Relevant Period, the AFL—

earned income from the licensing of football insignia which was applied for the benefit of the VFL or AFL (as applicable), Clubs and Players.

Particulars

- i. *The particulars subjoined to paragraph 73 above are repeated.*
- ii. *The VFL 79th Annual Report for the season 1975 (p 9) states that marketing managers were appointed to VFL Properties*

Division and who were responsible in the first instance to the VFL Properties Sub-Committee comprising, inter alios, the Chairman of the AFL, Sir Maurice Nathan. The report states “it is already apparent that considerable revenue will be derived in the initial year, the full earning potential is not likely to be realised until the second or event third year of operation. The sources of income will prove to be many and varied, and take the form of negotiated lump sum payments or royalties on sales of approved products”.

- iii. *The VFL 92nd Annual Report for the season 1988 refers (p 42) to the VFL’s marketing division’s two major objectives in 1988 were to rekindle the licensing and merchandising operation and to promote the sale of Club membership tickets. The report states that a licensing firm helped “spearhead the league’s campaign to generate greater revenue from licensing activities”.*
- iv. *Memorandum of Association cl 4, as pleaded in paragraph 26 above .*
- v. *Constitution cl 7, as pleaded in paragraph 31(h) above.*
- vi. *Further particulars may be provided following discovery.*

B7. Television and radio broadcasting

Television and radio broadcasting

75. From:

- (a) around 1971 to 23 January 1990, the VFL; and
- (b) 24 January 1990 to the end of the Relevant Period, the AFL—

entered into contracts or arrangements with television and radio broadcasting stations:

- (i) in relation to the telecast and radio broadcasting of Australian Rules Football matches; and
- (ii) in consideration for the payment of telecast and broadcasting fees to be applied for the benefit of the VFL or AFL (as applicable), Clubs and Players.

Particulars

- i. *The VFL 75th Annual Report for the season 1971 (p 14) refers to an agreement between the League and the metropolitan television stations to permit stations to videotape persons of play. The report also refers to an agreement reached with respect to the telecast of matches in Sydney and Canberra. The report states that the Legue’s gross receipts from a direct telecast of the Brownlow Medal count (\$5,000) was applied to the Players’ Provident Fund (p 18).*

- ii. *The VFL 76th Annual Report for the season 1972 (p 16) refers to various agreements with television stations and radio broadcasting stations in relation to the telecast and radio broadcast of VFL matches.*
- iii. *The VFL 77th Annual Report for the season 1973 (p 20) states that the proceeds from the telecast of the Brownlow Medal count (\$5,000) was allocated to the Players' Provident Fund.*
- iv. *The VFL 78th Annual Report for the season 1974 (p 16) refers to various agreements with television stations and radio broadcasting stations in relation to the telecast and radio broadcast of VFL matches in return for financial payments. The report states that income received from the broadcast of the Brownlow Medal count (\$5,000) was applied to the Players Provident Fund (p 31).*
- v. *The VFL 79th Annual Report for the season 1975 (p 20) refers to various agreements with television stations and radio broadcasting stations in relation to the telecast and radio broadcast of VFL matches.*
- vi. *The VFL 81st Annual Report for the season 1977 (p 13) refers to the VFL Board granting the exclusive rights to televise the Grand Final for \$100,000 (p 13). The report states that under the new TV agreement there is an escalation in the annual rights payments on each year of the agreement and will mean a total payment to the League over the period of \$2,730,000.*
- vii. *The VFL 86th Annual Report for the season 1982 (p 32) records in a chart that the VFL earned receipts from granting media rights. Income (after the payment of expenditures) is distributed to the 12 Clubs by way of dividend payment and used by the Clubs to make player payments and pay other expenses.*
- viii. *The VFL 87th Annual Report for the season 1983 (p 35) records in a chart that the VFL earned receipts from granting media rights. Income (after the payment of expenditures) is distributed to the 12 Clubs by way of dividend payment and used by the Clubs to make player payments and pay other expenses.*
- ix. *The VFL 87th Annual Report for the season 1983 (p 45) refers to a "major breakthrough" when the Grand Final was broadcast in the United States of America via the ESPN network.*
- x. *The VFL Annual Report for the season 1985 (pp 40-1) refers to income earned by the VFL from international television rights. The charts on p 41 illustrate receipt of income from television, radio and sponsorship and payments to VFL Clubs as expenditure.*
- xi. *The chart in the VFL 92nd Annual Report for the season 1988 (p 20) refers to income earned from inter alia television rights and grants to Clubs as expenditure.*

- xii. *1984 Articles of Association, as pleaded in paragraph 19(e) above.*
- xiii. *Memorandum of Association cll 2(d)(xiii), 2(d)(xiv), as pleaded in paragraphs 25(g)(i) and 25(g)(ii) above.*
- xiv. *Constitution cll 5(l), 5(m), as pleaded in paragraphs 31(g)(i) and 31(g)(ii) above.*
- xv. *Further particulars may be provided following discovery.*

B8. Corporate sponsorships

Corporate sponsorships

76. From:

- (a) at least 1981 to 23 January 1990, the VFL; and
- (b) 24 January 1990 to the end of the Relevant Period, the AFL—

earned income from the corporate sponsorship of Australian Rules Football which was applied for the benefit of the VFL or AFL (as applicable), Clubs and Players.

Particulars

- i. *Corporate and United Breweries sponsored the VFL season in 1981: the VFL 85th Annual Report for the season 1981 (p 34).*
- ii. *The VFL 86th Annual Report for the season 1982 (p 32) records in a chart that the VFL earned receipts from sponsorship. Income (after the payment of expenditures) is distributed to the 12 Clubs by way of dividend payment and used by the Clubs to make player payments and pay other expenses.*
- iii. *The VFL 87th Annual Report for the season 1983 (p 35) records in a chart that the VFL earned receipts from sponsorship. Income (after the payment of expenditures) is distributed to the 12 Clubs by way of dividend payment and used by the Clubs to make player payments and pay other expenses. The report states (p 41) that General-Motors Holden was the corporate sponsor in 1983. Channel 7 continued its sponsorship during 1983, providing prizemoney totalling \$250,000 (p 41). \$190,000 of that amount was split up amongst the 12 Clubs at the end of the season (p 41).*
- iv. *The VFL 92nd Annual Report for the season 1988 (p 42) records Elders IXL sponsored the premiership season, and Myer sponsored the finals series. Panasonic was the sponsor of the pre-season competition. Other major supporters of the league included Australian Television Network, Smith & Nephew, Coca-Cola Bottlers – Melbourne and adidas. The report states that the annual distribution to Clubs*

significantly increased in part due to increased revenues from corporate sponsorships (p 20).

- v. *The AFL Annual Report for the season 1994 states that the AFL earns income from sponsors and all net income is reinvested in Australian Football (p 2).*
- vi. *The AFL Annual Report for the season 1998 lists the growth in sponsorship revenue for the period 1993 to 1998 (p 27).*
- vii. *The AFL Annual Report for the season 2022 refers to Carlton and United Breweries commencing as the Premier Partner of the AFL in 2001 and that the sponsorship included naming rights (p 60).*
- viii. *The AFL Annual Report for the season 2011 refers to Toyota extending its sponsorship of the AFL (p 58).*
- ix. *The AFL Annual Report for the season 2016 states that the Toyota sponsorship is ranked as “amongst the biggest sponsorship deals in Australian sport (p 64).*
- x. *Memorandum of Association cl 4, as pleaded in paragraph 26 above.*
- xi. *Constitution cl 7, as pleaded in paragraph 31(h) above.*
- xii. *Further particulars may be provided following discovery.*

B9. Publications

Publications

77. From:

- (a) at least 1975 to 23 January 1990, the VFL; and
- (b) 24 January 1990 to the end of the Relevant Period, the AFL—

earned income from the sale of Australian Rules Football publications which was applied for the benefit of the VFL or AFL (as applicable), Clubs and Players.

Particulars

- i. *The VFL 79th Annual Report for the season 1975 (p 9) refers to the sales of the Football Record. The Publications Board was chaired by the VFL Chairman, Sir Maurice Nathan.*
- ii. *The VFL 81st Annual Report for the season 1977 (p 18) states that sales of the Football Record were maintained at very high levels throughout the home and away rounds. The report states that several editions were produced for the first time and the extra edition required for the Grand Final re-play “made this publication a great revenue producer for the League”.*

- iii. *The VFL 83rd Annual Report for the season 1979 (p 29) states that the sales and revenue of the Football Record reached an all time high in 1979 and that two other publications – “Finals Action” and “League Football in Victoria 1978-79” – produced high circulation figures.*
- iv. *The VFL 87th Annual Report for the season 1983 (p 35) records in a chart that the VFL earned receipts from publications. Income (after the payment of expenditures) is distributed to the 12 Clubs by way of dividend payment and used by the Clubs to make player payments and pay other expenses.*
- v. *The VFL Annual Report for the season 1988 refers (p 42) to the publication of the Football Record and sales of the Record increased by 75,000 in total.*
- vi. *Memorandum of Association cll 2(d)(xxxvii), 2(d)(xxxviii), as pleaded in paragraphs 25(g)(iii) and 25(g)(iv) above.*
- vii. *Constitution cll 5(ii), 5(kk), as pleaded in paragraphs 31(g)(iii) and 31(g)(iv) above.*

C. NEGLIGENCE– ABUSED AFL PLAYERS

D.1 Duty of care

Risk of harm

78. At all times in the Relevant Period, the Abused AFL Players were at risk of experiencing physical and/or verbal racist abuse from other Players whilst participating in the Australian Rules Football Competition (**Player Abuse Harm**).

Particulars

- i. *The risk arose by reason of the Abused AFL Players’ status as Indigenous persons.*
- ii. *By no later than May 1980, the physical and verbal racial abuse of the Abused AFL Players in the Australian Rules Football Competition was a matter of notoriety. The plaintiffs refer to the instances of physical and verbal racial abuse and its consequences which were the subject of media reporting as set out in Schedule C to this pleading.*
- iii. *Prior to and throughout the Relevant Period, there were several well publicised and notorious instances of Indigenous AFL Players and other VFL/AFL participants enduring physical and verbal racist abuse from other Players whilst participating in the Australian Rules Football Competition. These include:*
 - A. *The racial abuse of Mr Robert Muir in 1978 and 1980 as detailed at paragraphs [50] – [52] of the report of Associate Professor Matthew Klugman dated*

9 September 2024 (**Klugman Report**). The abuse endured by Mr Muir from Players was widely publicised at the time. The racial aspect of that abuse was reported in *The Age* newspaper. In 1984, Mr Muir spoke to radio station 3AW after a game and said that he had been racially abused “every five or ten minutes”: Klugman Report [53]. In 2020, after Mr Muir gave a detailed account of the various forms of racism he had experienced in the AFL, the AFL issued a formal apology and acknowledged that “there will be similar stories from our game’s past that we need to address”: Klugman Report at [58]. Mr Muir was racially abused by Players on 3 May 1980 during a match at Victoria Park. Mr Muir exhibited distress during that match: <https://www.abc.net.au/news/2020-08-23/persecution-of-robert-muir-story-football-doesnt-want-to-hear/12553554> (accessed 3 April 2025).

- B. In about May 1980, in response to an incident of racial abuse against Mr Muir by another Player, the VFL’s Director of Umpiring, Mr Harry Beitzel, met with all senior and reserve grade umpires and issued a personal order that the umpires had a responsibility to “look after the volatile type of player”. Mr Beitzel was reported as stating: “I told [the umpires] that if they heard one player taunting another, insulting him or abusing him over his race or colour, they should get in there and defuse the situation immediately”. In relation to that incident, it was reported that reports would be made under the Conduct Rule in force at that time: see S Butcher, ‘VFL Insult Crackdown’.
- C. An article published in *The Age* on 26 April 1982 titled ‘Blacks in the Big League’ detailed a practice by opposing players using racial abuse as part of a strategy to put players off their game. The article discussed the abuse of Maurice Rioli and the following statement was attributed to him: “I realised that if I wanted to make it in football, I had to put the insults at the back of my mind, forget all about them. It was hard, but I did it”. The following statement was attributed to Ron Joseph (long time North Melbourne Football Club administrator): “Of course they [the Krakouer brothers] cop racial abuse, but they can handle it ... If Jim and Phillip can maintain their ambition for the next eight or nine years, they will be financially set up for life. What more can any young man ask?” Further, in 1987, the Australian Society for Sports History published the book ‘Aboriginies in Sport’ by Colin Tatz. The book detailed racial abuse experienced by Phillip and James Krakouer, Mr Doug Nicholls, Mr Syd Jackson and the umpire, Mr Glenn James.

D. *In 1991, renowned AFL journalist, Caroline Wilson published an article in The Age titled ‘Racism on the field: AFL football’s shameful secret’. That article detailed instances of racial abuse experienced by several Indigenous AFL players. In a statement attributed to (then) the Collingwood Captain: “I’d make a racist comment every week if I thought it would help win the game. If I think I can say something to upset someone, then I’ll say it. I couldn’t give a stuff about their race, religion or creed. If they react, you know you’ve got ‘em. If they’re going to get upset by taunts, then they shouldn’t be playing. We’re men, we’re not kids. It’s no different calling a bloke a black bastard than him calling me a white honky, and it only lasts as long as the game. And listen, any bloke in the history of footy who was a dead-set winner will tell you the same, they’ll do anything they can to win”.*

E. *The plaintiff otherwise refers to the other well-known and notorious instances of racial abuse by Players and spectators as against Mr Michael Long, Mr Adam Goodes, Mr Eddie Betts and Mr Lance Franklin detailed at paragraphs [69] to [78] and [85] to [91] of the Klugman Report.*

iv. *The physical abuse included punching, hitting, kicking and spitting.*

v. *Further particulars may be provided following the filing of expert evidence.*

79. At all times in the Relevant Period, the Abused AFL Players were at risk of experiencing physical and/or verbal racist abuse from opposition Players whilst participating in the Australian Rules Football Competition as part of a strategy by the opposition Player to affect the Abused AFL Players’ performance during football matches (**Player Abuse Strategy**).

Particulars

i. *The risk arose by reason of the Abused AFL Players’ status as Indigenous persons.*

ii. *The plaintiffs refer to and repeat the particulars subjoined to paragraph 78 above. The abuse endured by Mr Muir as set out in the particulars subjoined to paragraph 78 above was described as a “match ploy” by Mr Muir.*

iii. *The physical and verbal racial abuse of the Abused AFL Players as a match ploy or strategy in the Australian Rules Football Competition was a matter of notoriety. The plaintiffs refer to the instances of physical and verbal racial abuse and its consequences which were the subject of media reporting as set out in Schedule C to this pleading.*

- iv. *The physical abuse included punching, hitting, kicking and spitting.*
- v. *Klugman Report at [18]-[22], [26],[49]-[58], [60]-[63], [65]-[67], [69]-[70] and [135].*
- vi. *Further particulars may be provided following the filing of expert evidence.*

80. Further, at all times in the Relevant Period, the Abused AFL Players were at risk of experiencing physical and/or verbal racist abuse from spectators whilst participating in the Australian Rules Football Competition (**Spectator Abuse Harm**).

Particulars

- i. *The risk arose by reason of the Abused AFL Players' status as Indigenous persons.*
- ii. *By no later than May 1980, the racial abuse of the Abused AFL Players by spectators in the Australian Rules Football Competition was a matter of notoriety. The plaintiffs refer to the instances of racial abuse and its consequences which were the subject of media reporting as set out in Schedule C to this pleading.*
- iii. *The Abused AFL Players were spat on and had objects, projectiles and liquids thrown at or poured on them by spectators, including urine.*
- iv. *Prior to and throughout the Relevant Period, there were several well publicised and notorious instances of Indigenous AFL Players and other VFL/AFL participants enduring physical and/or verbal racist abuse from spectators whilst participating in the Australian Rules Football Competition. These include:*
 - A. *The racist abuse detailed in an article published by Mr Greg Lyons in 1978 titled 'Racial prejudice at the footy', Legal Services Bulletin, 3(3) pp 103-8. The article details the abuse of umpire Mr James at a football match in the first round of 1978.*
 - B. *An article published in The Age on 26 April 1982 titled 'Blacks in the Big League' detailed the racial abuse directed at Phillip Krakouer and James Krakouer by sections of the crowd at the North Melbourne – Essendon VFL game. James Krakouer was hit by a beer when standing in the goal square.*
 - C. *The article referred to in particular (iii)(D) to paragraph 78 above also details instances of a group of Indigenous football players receiving death threats as part of a hate campaign.*
 - D. *The second plaintiff, Neil Winmar, experienced a notorious instance of racial abuse on 17 April 1993, when after enduring racial abuse on the field from*

spectators, he lifted his jersey and pointed at his skin and shouted: “I’m black and I’m proud to be black”. This became widely known as “Nicky Winmar’s stand”. At the time, and reporting on Mr Winmar’s stand, The Age newspaper reported that “Although many Aboriginal players tend to shrug off the racist abuse that appears to have become a feature of the game, Winmar’s defiant gesture suggests a change in attitude that, for him at least, enough is enough”. The AFL describes this as a “seminal moment in race relations in Australia, following a day of racial taunting by Collingwood supporters at Victoria Park”: AFL, ‘Hundreds heal with Winmar 30 years on from racism stand’ at www.afl.com.au/news/907536/hundreds-heal-with-st-kildas-nicky-winmar-30-years-on-from-racism-stand-against-collingwood (accessed 27 March 2025).

- v. *The plaintiffs refer to and repeat the particulars subjoined to paragraphs 78 and 79 above.*
- vi. *Further particulars may be provided following the filing of expert evidence.*

81. At all times throughout the Relevant Period, the Abused AFL Players were at risk of suffering injury in the form of physical injury, psychological injury and/or psychiatric injury by reason of the matters pleaded in paragraphs 78 to 80 above (**the Abuse Injuries Risk of Harm**).

Particulars

- i. *The plaintiffs refer to and repeat paragraphs 78 to 80 above and the particulars subjoined to those paragraphs.*
- ii. *In about May 1980, in response to an incident of racial abuse against Mr Muir by another Player, the VFL’s Director of Umpiring, Mr Harry Beitzel, met with all senior and reserve grade umpires and issued a personal order that the umpires had a responsibility to “look after the volatile type of player”. Mr Beitzel was reported as stating: “I told [the umpires] that if they heard one player taunting another, insulting him or abusing him over his race or colour, they should get in there and defuse the situation immediately”. In relation to that incident, it was reported that reports would be made under the Conduct Rule in force at that time: see S Butcher, ‘VFL Insult Crackdown’.*
- iii. *The Abused AFL Players exhibited signs of stress or trauma during and after match play by reason of their exposure to physical and/or verbal racist abuse by Players and spectators including psychological distress, depression, anxiety, physical fights, alcohol and/or drug abuse.*
- iv. *Physical injury results from racist physical abuse perpetrated against the victim.*

- v. *Experiences of racism (direct and vicarious) can result in acute and chronic emotional and psychological impacts.*
- vi. *Racism directly affects the body through activating the stress response, resulting in short-, medium- and long-term biological changes that can have significant consequences for emotional and psychological health caused by long-term pathophysiological changes. (Paradies Report) at pp 4-5.*
- vii. *As set out at p 5 of the Paradies Report, the impact of racism occurs through several pathways:*
 - A. *stress, fear, anxiety and negative emotional states which have a direct detrimental effect on emotional and psychological health as well as damaging physiological systems;*
 - B. *negative evaluation and stereotypes which can be internalised causing psychological wellbeing and higher levels of depressive symptoms, poor self-work, self-efficacy and self-esteem which in turn impacts on emotional and psychological health including increased anxiety, reduced self-regulation and impaired decision making; and*
 - C. *increases in unhealthy behaviours which can impact on emotional and psychological health such as smoking, drug and alcohol misuse, as well as decreases in healthy behaviours such as sleep, health eating, safe sex and exercised caused directly by stress or indirectly by reduced capacity for self-regulation.*
- viii. *Racism is statistically significantly associated with poorer mental health, including depression, anxiety and psychological stress: Paradies Report p 6.*
- ix. *Exposure to racism has been linked to a range of mental and physical health outcomes, including: psychological stress, poor self-worth, poor self-efficacy, reduced self-esteem, diminished self-regulation, impaired decision making, anxiety, depression, suicidality, high blood pressure, cardiovascular disease, diabetes, genetic damage, inflammation, poor immune functioning, preterm, low birthweight or small for gestational age, angina, arthritis, asthma, cancer, stroke, ear infection, gastrointestinal infection and disease, kidney and liver/gallbladder problems, neurological conditions, childhood illnesses, osteoporosis, Parkinson's disease, respiratory infection, rheumatism, scabies, sickle cell disease, sickle cell trait and skin infection, obesity, poor sleep quality and insufficient exercise, as well as maladaptive behaviours such as smoking, alcohol, poor diet, substance misuse, risky sexual behaviours and delays in seeking healthcare: Paradies Report p 6.*
- x. *Further particulars may be provided following the filing of expert evidence.*

Vulnerability of Players to racial abuse and harm

82. At all material times in the Relevant Period, whilst playing in football matches in the Australian Rules Football Competition, the Abused AFL Players were:

- (a) vulnerable to the Player Abuse Harm, the Player Abuse Strategy, the Spectator Abuse Harm and the Abuse Injuries Risk of Harm as pleaded at paragraphs 78 to 81 above; and
- (b) reliant on the VFL and AFL (as applicable) to provide them with a place which was safe from racial abuse in which to play football matches as part of the Australian Rules Football Competition.

Particulars

- i. *The Abused AFL Players exhibited signs of stress or trauma during and after match play by reason of their exposure to physical and/or verbal racist abuse by Players and spectators including psychological distress, depression, anxiety, physical fights, alcohol and/or drug abuse.*
- ii. *The VFL and AFL (as applicable) conducted, managed, coordinated and controlled the Australian Rules Football Competition and scheduled the matches at Grounds where those matches were played. Whilst participating in those football matches as part of the Australian Rules Football Competition, the Abused AFL Players were subjected to racist verbal and physical abuse by Players and spectators. The particulars subjoined to paragraphs 78 to 81 above are repeated.*
- iii. *The Abused AFL Players participated the Australian Rules Football Competitions as a spectacle from which the VFL or AFL (as applicable) derived profit.*
- iv. *The VFL and AFL (as applicable) created the conditions in which the Player Abuse Harm, the Player Abuse Strategy, the Spectator Abuse Harm and the Abuse Injuries Risk of Harm existed by conducting, managing, coordinating and controlling the Australian Rules Football Competition at Grounds where Player and spectator racial abuse took place.*
- v. *The VFL and AFL (as applicable) exercised control over the Player Abuse Harm, the Player Abuse Strategy, the Spectator Abuse Harm and the Abuse Injuries Risk of Harm because it determined and set the Rules and had control over matters of discipline, including as they related to Reportable Offences and when they must be reported and the sanctions and punishment in respect of breaches of the Conduct Rule and the Racial Vilification Rule. The VFL and AFL (as applicable) set and determined the general conditions to entry to grounds. The VFL and AFL (as applicable) set, determined, negotiated and scheduled at which Grounds the football matches would be played.*

- vi. *There was an inequality of bargaining position between, on the one hand, the VFL or AFL (as applicable) and the Abused AFL Players in that the AFL Players did not set the Rules, enforce those Rules (including as to matters of discipline) and did not set, determine, negotiate or schedule at which Grounds the football matches they participated in as part of the Australian Rules Football Competition were played. The bargaining power was not equal. The Abused AFL Players had no control over the configuration of the grounds or the protection of the races. The Abused AFL Players were reliant on the VFL and AFL (as applicable) to provide them with a safe place in which to play football matches as part of the Australian Rules Football Competition. The Abused AFL Players could not protect themselves from the Player Abuse Harm, the Player Abuse Strategy, the Spectator Abuse Harm and the Abuse Injuries Risk of Harm, except by fighting back (and potentially being the subject of a Reportable Offence).*
- vii. *Upon its enactment in 1975, the Racial Discrimination Act 1995 (Cth) (**RD Act**) recognised that Indigenous persons were vulnerable to racial discrimination and made it unlawful to engage in discrimination, inter alia, on the grounds of race, colour, descent or national or ethnic origin. From 13 October 1995, the RD Act made unlawful doing an act (otherwise than in private) if the act is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or group of persons and that act is done because of the race, colour or national or ethnic origin of the other person or some or all of the people in the group: s 18C.*
- viii. *Further particulars may be provided following the filing of expert evidence.*

The VFL or AFL knowledge

83. At all material times in the Relevant Period, the VFL or AFL (as applicable), knew or ought to have known:

- (a) of the Player Abuse Harm, the Player Abuse Strategy and the Spectator Abuse Harm, as pleaded at paragraphs 78 to 80 above; and
- (b) of the Abuse Injuries Risk of Harm, as pleaded in paragraph 81 above.

Particulars

- i. *The particulars subjoined to paragraphs 78 to 81 above are repeated.*
- ii. *In about May 1980, in response to an incident of racial abuse against Mr Muir by another Player, the VFL's Director of Umpiring, Mr Harry Beitzel, met with all senior and reserve grade umpires and issued a personal order that the umpires had a responsibility to "look after the volatile type of player".*

Mr Beitzel was reported as stating: “I told [the umpires] that if they heard one player taunting another, insulting him or abusing him over his race or colour, they should get in there and defuse the situation immediately”. In relation to that incident, it was reported that reports would be made under the Conduct Rule in force at that time: see S Butcher, ‘VFL Insult Crackdown’.

- iii. *By no later than May 1980, the racial abuse of the Abused AFL Players in the Australian Rules Football Competition was a matter of notoriety. The plaintiffs refer to the instances of racial abuse and its consequences which were the subject of media reporting as set out in Schedule C to this pleading.*
- iv. *The Abused AFL Players exhibited signs of stress or trauma during and after match play by reason of their exposure to physical and/or verbal racist abuse by Players and spectators including psychological distress, depression, anxiety, physical fights, alcohol and/or drug abuse.*
- v. *Further particulars may be provided following discovery and/or the filing of expert evidence.*

84. Further, at all material times in the Relevant Period, the VFL or AFL (as applicable), knew or ought to have known:

- (a) of the vulnerability of the Abused AFL Players to the Player Abuse Harm, the Player Abuse Strategy, the Spectator Abuse Harm and/or the Abuse Injuries Risk of Harm, as pleaded in paragraph 82(a) above; and
- (b) of the Abused AFL Players’ reliance on the VFL and AFL (as applicable), as pleaded in paragraph 82(b) above.

Particulars

- i. *As to (a), the particulars subjoined to paragraphs 78 to 81 above are repeated.*
- ii. *As to (b), the particulars to paragraph 82 above are repeated.*
- iii. *By no later than May 1980, the racial abuse of the Abused AFL Players in the Australian Rules Football Competition was a matter of notoriety. The plaintiffs refer to the instances of racial abuse and its consequences which were the subject of media reporting as set out in Schedule C to this pleading.*
- iv. *The Abused AFL Players exhibited signs of stress or trauma during and after match play by reason of their exposure to physical and/or verbal racist abuse by Players and spectators including psychological distress, depression, anxiety, physical fights, alcohol and/or drug abuse.*
- v. *Further particulars may be provided following discovery and/or the filing of expert evidence.*

VFL or AFL control

85. The VFL or AFL (as applicable):

- (a) at all material times during the Relevant Period, conducted, directed, coordinated and controlled the Australian Rules Football Competition, as pleaded in paragraphs 13 to 32 above;
- (b) directed, coordinated and controlled Players:
 - (i) at all material times during the Relevant Period, by determining the terms and conditions upon which persons may play for Clubs, as pleaded in paragraphs 19(a), 25(a)(i), 45 and 46 above;
 - (ii) from at least 1993 to the end of the Relevant Period, by restricting the activities of Players in activities connected with television broadcasting advertising, the writing of articles for newspapers and contributions to publications, as pleaded in paragraphs 25(a)(ii) and 31(a)(ii) above;
 - (iii) from November 2003 to at least 2022, by prohibiting or restricting Players who are AFLPA members from participating in or being involved in any other Australian Football competition, as pleaded in paragraph 58(a) above; and
 - (iv) from November 2003 to at least 2022, by requiring Players who are AFLPA members to be available to participate in appearances for the promotion of the AFL, as pleaded in paragraph 58(b) above;
- (c) directed, coordinated and controlled the financial payments, consideration and benefits payable or made available to Players:
 - (i) from at least 1975, by putting in place the Personal Accident Insurance arrangements, as pleaded in paragraph 47 above;
 - (ii) by no later than 1970 to around 1980, by making payments to the Players' Provident Fund for the benefit of Players, as pleaded in paragraph 48 above;
 - (iii) from around 1980, by determining and making rules with respect to, and determining and setting Player's match payments, as pleaded in paragraph 49 above;
 - (iv) from around 1987 to the end of the Relevant Period, by determining and setting the salary cap, as pleaded in paragraph 51 above; and

- (v) from around November 1995 to at least 2022, by making payments to the fund established for the welfare of Players who are AFLPA members, as pleaded in paragraph 57(f) above;
- (d) directed, coordinated and controlled the terms and conditions of Players' employment with Clubs:
 - (i) from around 1988 to at least 2022, by entering into the SPCs with Players and Clubs pursuant to which the VFL or AFL (as applicable), contracted the Player to play in the Australian Rules Football Competition conducted by the AFL, as pleaded in paragraphs 52 and 53 above;
 - (ii) from 6 November 1995 to at least 2022, by entering into the CBAs with the AFLPA which, *inter alia*:
 - 1. bound the Clubs to the terms of the CBA, as pleaded in paragraphs 56(b) and 57(a) above;
 - 2. established the minimum terms and conditions of employment applying to all Players who are AFLPA members employed during the term of the CBA, as pleaded in paragraphs 56(c), 56(e) and 57(b) above; and
 - 3. established the minimum benefits of employment as to base salary, relocation expenses, injury and illness payments, medical payments, termination payments, annual leave and health insurance benefits for all Players who are AFLPA members, as pleaded in paragraphs 56(f) and 57(c) above; and
 - 4. set the total payments and benefits to be made and provided to Players who are AFLPA members by the AFL and Clubs, as pleaded in paragraph 57(d) and 57(e) above;
- (e) directed, coordinated and controlled the conduct of football matches played in the Australian Rules Football Competition:
 - (i) at all material times in the Relevant Period, by determining and setting the Rules by which football matches and competitions were played in the Australian Rules Football Competition, including the Conduct Rule, as pleaded in paragraphs 19(c), 22(b), 25(d), 31(d), 33, 35 to 37 above;
 - (ii) from 30 June 1995, determining and setting the Racial Vilification Rule, as pleaded in paragraphs 19(c), 22(b), 25(d), 31(d), 33, 35, 38 and 39 above;

- (iii) at all material times in the Relevant Period, by determining which conduct by Players constituted a Reportable Offence, as pleaded in paragraph 34(f) above;
 - (iv) by no later than 1984 to the end of the Relevant Period, by conducting, coordinating and scheduling the football matches played in the Australian Rules Football Competition at the Grounds, as pleaded in paragraphs 61 and 62 above;
 - (v) at all material times in the Relevant Period, by conducting, coordinating and directing the selection and appointment of the umpires and match officials to officiate football matches played at Grounds in the Australian Rules Football Competition, as pleaded in paragraphs 34(e) and 40 above; and
 - (vi) at all material times in the Relevant Period, by setting and determining the rules by which umpires and match officials must make reports about Reportable Offences, as pleaded in paragraphs 34(g), 37 and 41 above;
- (f) at all material times in the Relevant Period, conducted, directed, coordinated and controlled matters of discipline and conduct complaints by establishing the Disciplinary Tribunal, as pleaded in paragraph 42 above, which was empowered to:
- (i) hear and determine upon and settle all questions or disputes on any matter related to football, as pleaded in paragraphs 25(e)(i), 31(e)(i) and 42 above;
 - (ii) hear and determine any allegation, complaint or charge which may be laid against any Player involving a breach of the laws relating to football and the Rules, including the Conduct Rule and, after 30 June 1995, the Racial Vilification Rule, as pleaded in paragraphs 25(e)(ii) and 31(e)(ii) and 40 to 44 above; and
 - (iii) inflict fines or penalties by way of suspension or expulsion on any Player for any breach of the laws relating to football and the Rules, including the Conduct Rule and, after 30 June 1995, the Racial Vilification Rule, as pleaded in paragraphs 25(e)(iii), 31(e)(iii) and 40 to 44 above;
- (g) from 30 June 1995 to the end of the Relevant Period, conducted, directed, coordinated and controlled matters of discipline and conduct complaints against non-Players alleged to have contravened the Racial Vilification Rule, as pleaded in paragraph 44(b) above;
- (h) directed, coordinated and controlled Clubs:
- (i) from no later than 1985 to the end of the Relevant Period, by granting licenses to Clubs and setting the terms and conditions of those licences pursuant to which the Clubs were given the right to field teams in the Australian Rules Football Competition, as pleaded in paragraph 60 above;

- (ii) from 12 December 1984 to the end of the Relevant Period, by determining the terms and conditions upon which football matches may be played by Clubs, as pleaded in paragraphs 25(c)(i), 31(c)(i) and 59 above;
 - (iii) from 12 December 1984 to the end of the Relevant Period, by admitting any Club or expelling or suspending any Club from the Australian Rules Football Competition, as pleaded in paragraphs 19(b), 22 and 32 above;
 - (iv) from 6 November 1995 to at least 2022, by binding the Clubs to the terms of the CBA, as pleaded in paragraphs 56(b) and 57(a) above; and
 - (v) from 6 November 1995 to at least 2022, by setting the total payer payments for each Club, being the maximum amounts per year paid to Clubs for the benefit of Players who are AFLPA members with each Club, as pleaded in paragraph 57(e) above;
- (i) from 1993 to the end of the Relevant Period, directed, coordinated and controlled umpires and coaches by restricting the activities of umpires and coaches in activities connected with television broadcasting advertising, the writing of articles for newspapers and contributions to publications, as pleaded in paragraphs 25(b) and 31(b) above;
 - (j) directed, coordinated and controlled Grounds:
 - (i) by no later than 1984 to the end of the Relevant Period, by setting, determining, negotiating and scheduling at which Grounds the football matches conducted as part of the Australian Rules Football Competition would take place, as pleaded in paragraph 62 above;
 - (ii) from the start of the Relevant Period to a date unknown by the plaintiffs but known to the AFL, by owning VFL Park, as pleaded in paragraph 63 above;
 - (iii) from 2016 to the end of the Relevant Period, by owning Marvel Stadium, as pleaded in paragraph 72 above;
 - (iv) in about 1973, by establishing the Ground Improvement Fund as pleaded in paragraph 64 above, which was subject to the oversight of the VFL Board of Directors in approving plans for improvements, costs estimates and final tender and directly making payments for work (including servicing of loans), as pleaded in paragraph 65 above;
 - (v) in or around 1973 and 1982 respectively, by designating areas as non-drinking areas and prohibiting alcohol brought from outside premises from being taken

inside grounds where the Australian Rules Football Competition was conducted, as pleaded in paragraphs 68 and 69 above;

- (vi) from around 1988, by introducing enhanced security measures at all Grounds following incidents of crowd control at Grounds before and after football matches played in the Australian Rules Football Competition, as pleaded in paragraph 70 above;
 - (vii) from around 1994 to the end of the Relevant Period, by granting leases or licenses in respect of liquor and other rights at properties, as pleaded in paragraphs 25(f)(ii) and 31(f)(ii) above; and
 - (viii) from a date unknown to the plaintiffs but known to the AFL, by determining and setting the general conditions for entry to grounds upon which spectators would be and were permitted to enter Grounds, and the terms upon which those spectators could be removed, banned or disqualified from purchasing tickets to matches and/or entering Grounds where the Australian Rules Football Competition was conducted, as pleaded in paragraph 71 above;
- (k) at all material times in the Relevant Period exercised directed, coordinated and controlled the use of VFL or AFL (as applicable) intellectual property, as pleaded in paragraphs 73 and 74 above;
- (l) at all material times in the Relevant Period, directed, coordinated and controlled the terms and conditions pursuant to which football matches were televised, broadcast or streamed, as pleaded in paragraphs 19(e), 25(g)(i), 25(g)(ii), 31(g)(i) and 31(g)(ii) and 75 above; and
- (m) at all material times in the Relevant Period, directed, coordinated and controlled the income from the licensing of VFL or AFL (as applicable) and Club intellectual property, sponsorship, telecast, broadcasting and streaming fees and publications revenue for the benefit of Clubs and Players, as pleaded in paragraphs, 25(g)(iii), 25(g)(iv), 26, 31(g)(iii), 31(g)(iv), 74 to 77 above.

Duties of care

86. In the premises, by reason of the matters pleaded at paragraphs 78 to 85 above, at all material times, the VFL and AFL (as applicable) owed a non-delegable duty of care to the Abused AFL Players akin or analogous to that which is owed by an employer to an employee to take reasonable care in:

- (a) devising, putting in place and maintaining a safe system of work; and

- (b) avoiding exposing the Abused AFL Players to unnecessary risks of injury—

to avoid or minimise the Player Abuse Harm, the Player Abuse Strategy, the Spectator Abuse Harm and the Abuse Injuries Risk of Harm (**the Abused Players’ Akin-to-Employment Duty of Care**).

87. Further or in the alternative to paragraph 86 above, in the premises, by reason of the matters pleaded at paragraphs 78 to 85 above, at all material times, the VFL and AFL (as applicable), as the entity which controlled, directed, coordinated and conducted the Australian Rules Football Competition as principal of the Australian Rules Football Competition, owed a duty of care to the Abused AFL Players to take reasonable care to:

- (a) devising, putting in place and maintaining a safe system of work; and
- (b) avoiding exposing the Abused AFL Players to unnecessary risks of injury—

to avoid or minimise each of the Player Abuse Harm, the Player Abuse Strategy, the Spectator Abuse Harm and the Abuse Injuries Risk of Harm (**the Abused Players’ Principal Duty of Care**).

88. Further or in the alternative to paragraphs 86 and 87 above, in the premises, by reason of the matters pleaded at paragraphs 78 to 85 above, at all material times the VFL and AFL (as applicable) owed a general duty of care to the Abused AFL Players to take reasonable care in controlling, directing, coordinating and conducting the Australian Rules Football Competition to avoid or minimise the Player Abuse Harm, the Player Abuse Strategy, the Spectator Abuse Harm and the Abuse Injuries Risk of Harm (**the Abused Players’ General Duty of Care**).

C2. VFL and AFL standard of care

89. At all material times in the Relevant Period, the Abuse Injuries Risk of Harm:
- (a) was reasonably foreseeable by the VFL or AFL (as applicable); and
 - (b) was not insignificant.

Particulars

- i. *The particulars subjoined to paragraphs 78 to 82 above are repeated.*
- ii. *The Abused AFL Players were hit, kicked, punched and spat on by Players. The Abused AFL Players were spat on and had objects and projectiles thrown at them by spectators.*
- iii. *The Abused AFL Players exhibited signs of stress or trauma during and after match play by reason of their exposure to physical and/or verbal racist abuse by Players and spectators including psychological distress, depression, anxiety, physical fights, alcohol and/or drug abuse.*

iv. *Further particulars may be provided following discovery and/or the filing of expert evidence.*

90. In the premises, by reason of the matters pleaded in paragraph 85 above, a reasonably prudent controlling sports body in the position of the VFL or AFL (as applicable) would have taken the following precautions against the Abuse Injuries Risk of Harm:

- (a) from the start of the Relevant Period:
 - (i) to enforce or adequately enforce the Conduct Rule and ensure instances of physical and/or verbal racist abuse by Players were reported by umpires and match officials;
 - (ii) to warn or adequately warn Players of the consequences for breach of the Conduct Rule;
 - (iii) to enclose or adequately protect the races or areas where Players enter the football field so that they are protected from verbal abuse, spitting, projectiles and other objects thrown on them by spectators;
 - (iv) to have in place the Racial Vilification Rule and to enforce or adequately enforce it and ensure instances of physical and/or verbal racist abuse by Players were reported by umpires and match officials;
 - (v) to adopt and enforce or adequately enforce rules or policies as to the circumstances in which a football match will be suspended or abandoned where there is physical and/or verbal racist abuse by Players or spectators;
 - (vi) to suspend or abandon football matches where there is physical and/or verbal racist abuse by Players or spectators;
 - (vii) to introduce adequate punishment and adequate sanctions for breach of the Conduct Rule with respect to physical and/or verbal racist abuse by Players including banning Clubs or Players from participating in the Australian Football Rules Competition for repeated breaches;
 - (viii) to introduce and adequately enforce rules which penalise Clubs whose Players or supporters engage in physical and/or verbal racist abuse by issuing point deductions on the League ladder;
 - (ix) to put in place measures or adequate measures to prevent spectators from breaching the ground perimeter and rushing onto the playing field;

- (x) to monitor or adequately monitor crowd behaviour during football matches in the Australian Rules Football Competition for instances of physical and/or verbal racist abuse; and
 - (xi) to introduce and maintain security measures or adequate security measures to control spectator behaviour;
- (b) in addition to the matters pleaded at sub-paragraph (a) above, from 30 June 1995:
- (i) to enforce or adequately enforce the Racial Vilification Rule and ensure instances of physical and/or verbal racist abuse by Players were reported by umpires and match officials; and
 - (ii) to introduce adequate punishment and adequate sanctions for breach of the Racial Vilification Rule with respect to physical and/or verbal racist abuse by Players including banning Clubs or Players from participating in the Australian Football Rules Competition for repeated breaches—

(the Precautions).

Particulars

- i. *As to (a)(i) and (ii), the VFL and AFL (as applicable) controlled, directed, coordinated and conducted the Australian Rules Football Competition, as pleaded in paragraph 85(a) above. The VFL and AFL (as applicable) were required to comply with the obligations and prohibitions in the RD Act. The VFL and AFL (as applicable) controlled, directed and coordinated the Rules by which football matches and competitions were played in the Australian Rules Football Competition and controlled, directed and coordinated the umpires and match officials to officiate football matches played at Grounds, as pleaded in paragraphs 85(e)(i) and 85(e)(v) above. The VFL and AFL (as applicable) controlled, directed and coordinated the Rules by which umpires and match officials must make reports about Reportable Offences, as pleaded in paragraph 85(e)(vi) above. The VFL and AFL (as applicable) controlled, directed, coordinated and conducted matters of discipline and conduct complaints, as pleaded in paragraphs 85(e)(i),(ii) and (v) and 85(f) above.*
- ii. *As to (a)(iii), the VFL and AFL (as applicable) controlled, directed, coordinated and conducted the Australian Rules Football Competition, as pleaded in paragraph 85(a) above. The VFL and AFL (as applicable) were required to comply with the obligations and prohibitions in the RD Act. The VFL and AFL (as applicable) exercised control over Grounds, as pleaded in paragraph 85(j) above.*

- iii. *As to (a)(iv) to (vii), the plaintiffs refer to and repeat particular (i) above.*
- iv. *As to (a)(ix) above, the VFL and AFL (as applicable) exercised control over Grounds, as pleaded in paragraph 85(j) above.*
- v. *As to (a)(x), the VFL and AFL (as applicable) appointed umpires and match officials, as pleaded in 85(e)(v) above. The VFL and AFL (as applicable) controlled, directed and coordinated the Rules by which umpires and match officials must make reports about Reportable Offences, as pleaded in paragraph 85(e)(vi) above. The VFL and AFL (as applicable) controlled, directed and coordinated matters of crowd control measures and security measures in response to poor crowd behaviour, as pleaded in paragraphs 85(j)(v) and 85(j)(vi) above.*
- vi. *As to (a)(ix), the VFL increased security measures in response to poor crowd behaviour, as pleaded in paragraph 85(j)(vi) above.*
- vii. *As to (b)(i) and (ii), the plaintiffs refer to and repeat particular (i) above.*
- viii. *Further particulars may be provided following discovery and/or the filing of expert evidence.*

C5. Breach of Abused Players’ Akin-to-Employment Duty of Care, the Abused Players’ Principal Duty of Care and the Abused Players’ General Duty of Care

91. At all material times from the start of the Relevant Period, the VFL and AFL (as applicable):

- (a) failed to enforce or adequately enforce the Conduct Rule and ensure instances of physical and/or verbal racist abuse by Players were reported by umpires and match officials;
- (b) failed to warn or adequately warn Players of the consequences for breach of the Conduct Rule;
- (c) failed to enclose or adequately protect the races or areas where Players enter the football field so that they are protected from verbal abuse, projectiles and other objects thrown on them by spectators;
- (d) failed to have in place the Racial Vilification Rule and to enforce or adequately enforce it and ensure instances of physical and/or verbal racist abuse by Players were reported by umpires and match officials;
- (e) failed to enforce or adequately enforce rules or policies as to the circumstances in which a football match would be suspended or abandoned where there was physical and/or verbal racist abuse by Players or spectators;

- (f) failed to suspend or abandon football matches where there was physical and/or verbal racist abuse by Players or spectators;
- (g) failed to introduce adequate punishment and adequate sanctions for breach of the Conduct Rule with respect to physical and/or verbal racist abuse by Players including banning Clubs or Players from participating in the Australian Football Rules Competition for repeated breaches;
- (h) failed to introduce and adequately enforce rules which penalise Clubs whose Players' or supporters engaged in physical and/or verbal racist abuse by issuing point deductions on the AFL ladder;
- (i) failed to put in place measures or adequate measures to prevent spectators from breaching the ground perimeter and rushing onto the playing field;
- (j) failed to monitor or adequately monitor crowd behaviour during football matches in the Australian Rules Football Competition for instances of physical and/or verbal racist abuse; and
- (k) failed to introduce and maintain security measures or adequate security measures to control spectator behaviour.

Particulars

- i. The plaintiffs refer to and repeat the matters pleaded at paragraphs 94 to 96 below.*
- ii. Further particulars may be provided following discovery and/or the filing of expert evidence.*

92. Further, on and from 30 June 1995, the AFL:

- (a) failed to enforce or adequately enforce the Racial Vilification Rule and ensure instances of physical and/or verbal racist abuse by Players were reported by umpires and match officials; and
- (b) failed to introduce adequate punishment and adequate sanctions for breach of the Racial Vilification Rule with respect to physical and/or verbal racist abuse by Players including banning Clubs or Players from participating in the Australian Football Rules Competition for repeated breaches.

Particulars

- i. The plaintiffs refer to and repeat the matters pleaded at paragraphs 94 to 96 below.*

- ii. *Further particulars may be provided following discovery and/or the filing of expert evidence.*

93. In the premises set out in paragraphs 91 and 92 above, on and from the start of the Relevant Period, the VFL and AFL (as applicable) breached the Abused Players' Akin-to-Employment Duty of Care, the Abused Players' Principal Duty of Care and/or the Abused Players' General Duty of Care.

C6. Breaches of duty caused loss and damage

Plaintiffs

94. By reason of the breaches of the Abused Players' Akin-to-Employment Duty of Care, the Abused Players' Principal Duty of Care and/or the Abused Players' General Duty of Care as pleaded in paragraphs 91 and 93 above, on and from around 1982 until around 1992, Phillip Krakouer was exposed and subjected to physical and verbal racist abuse from Players and spectators whilst playing in football matches in the Australian Rules Football Competition.

Particulars

- i. *The plaintiffs refer to and repeat particular (iii)(C) subjoined to paragraph 78 above and particular (iii)(B) subjoined to paragraph 80 above.*
- ii. *Phillip Krakouer was routinely spat on, or had other fluids poured onto him at Grounds, from beside and above as he passed the crowd through the race to and from the field, in particular at Victoria Park, Moorabbin Oval, Windy Hill and Princes Park. It occurred as a matter of course at those grounds, despite the races being able to be altered or covered or enclosed.*
- iii. *During football matches at Grounds in which he played as part of the Australian Rules Football Competition, spectators yelled out at him including abuse such as "animal", "dirty bastard", "petrol sniffer" and "nigger" and making abusive comments about his female family members.*
- iv. *At the end of football matches at Grounds, spectators rushed onto the football field and called Phillip Krakouer racist epithets.*
- v. *On or about 17 April 1982, a beer can was thrown from the crowd, and it struck Phillip Krakouer.*
- vi. *Phillip Krakouer was routinely subjected to racist abuse at Grounds by other Players including being called an "abo", "black cunt", "smelly", "black bastard" and "nigger". He was repeatedly subjected to racist abuse from other Players regarding his female family members.*

- vii. *Phillip Krakouer was repeatedly struck or hit by opposition Players at Grounds during football matches played in the Australian Rules Football Competition.*
- viii. *The plaintiffs refer to the instances of racial abuse and its consequences which were the subject of media reporting as set out in Schedule C to this pleading.*
- ix. *Further particulars may be provided following discovery*

95. By reason of the breaches Abused Players' Akin-to-Employment Duty of Care, the Abused Players' Principal Duty of Care and the Abused Players' General Duty as pleaded in paragraphs 91 to 93 above, on and from around 1987 until around 1999, Neil Winmar was exposed and subjected to physical and verbal racist abuse from Players and spectators whilst playing in football matches in the Australian Rules Football Competition.

Particulars

- i. *During football matches at Grounds in which he played as part of the Australian Rules Football Competition, Neil Winmar was frequently racially abused by spectators. The abuse was verbal, being called "black cunt", and other racial slurs. Spectators yelled abuse about Neil Winmar's family and his wife and threatened to kill members of his family. He also had bottles of urine and other liquids thrown at him or poured on him and he was spat at as he passed through the players' races at Grounds and on his way to the change rooms.*
- ii. *The plaintiffs refer to the instances of Neil Winmar's racial abuse and its consequences which were the subject of media reporting as set out in Schedule C to this pleading.*
- iii. *The plaintiffs refer to and repeat particular (iv)(D) subjoined to paragraph 80 above.*
- iv. *Further particulars may be provided following discovery.*

Abused AFL Players

96. By reason of the breaches Abused Players' Akin-to-Employment Duty of Care, the Abused Players' Principal Duty of Care and the Abused Players' General Duty as pleaded in paragraphs 91 to 93 above, on and from the start of the Relevant Period, the Abused AFL Players were exposed and subjected to physical and verbal racist abuse from Players, and spectators whilst playing in football matches in the Australian Rules Football Competition.

Particulars

- i. *The plaintiffs refer to and repeat the particulars subjoined to paragraphs 78 to 80 above.*

- ii. *The plaintiffs refer to the instances of racial abuse and its consequences which were the subject of media reporting as set out in Schedule C to this pleading.*
- iii. *Further particulars may be provided following discovery.*
- iv. *Particulars of the racist abuse suffered by the Abused AFL Players from Players and spectators will be supplied after the determination of the common question at the initial trial of the proceeding.*

Loss and damage

97. In the premises, the breaches of the Abused Players' Akin-to-Employment Duty of Care, the Abused Players' Principal Duty of Care and the Abused Players' General Duty of care caused loss or damage to the plaintiffs and the Abused AFL Players.

Particulars

As to Phillip Krakouer:

- i. *Physical injury, by Players and spectators physically abusing him.*
- ii. *Psychiatric injury.*
- iii. *Moderate, chronic Post-Traumatic Stress Disorder.*
- iv. *Moderate, Persistent Depressive Disorder with anxious distress.*
- v. *The plaintiffs refer to the medico-legal report of Dr David Weissman dated 19 February 2025 (**February Weissman Report**).*
- vi. *Phillip Krakouer does not require a Significant Injury within the meaning of Part VBA of the Wrongs Act 1958 (Vic) in this proceeding, as this is a claim where the conduct alleged 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 1958 (Vic). That the physical and/or racial abuse is an intentional act done with intent to cause injury can be inferred from the nature of the conduct itself. The plaintiffs refer to and repeat the particulars subjoined to paragraph 94 above.*
- vii. *Phillip Krakouer has sustained loss of earnings and loss of earning capacity by reason of his injuries set out in particulars (i) to (iv) above.*
- viii. *Phillip Krakouer has been prone, vulnerable and susceptible to exacerbations and aggravations of his psychiatric injuries, including experiencing triggers when exposed to, or experiencing racial abuse and victimisation: February Weissman Report at p 22.*

- ix. *On retiring from the Australian Rules Football Competition in or around 1992, Phillip Krakouer obtained employment with Australia Post from around 1992 until around 2004. Phillip Krakouer then moved to the Department of Justice from around 2006 to 2012, then worked for BHP in mining in around 2012 and 2013, and then worked at Linfox from around 2013 to 2015. During his employment at Australia Post, Krakouer experienced further racial abuse, including relating to the racial abuse he sustained whilst playing in football matches in the Australian Rules Football Competition, exacerbating and aggravating his psychiatric injuries. At Linfox, Phillip Krakouer was also racially abused, exacerbating and aggravating his psychiatric injuries.*
- x. *Currently, and from around 2015, Phillip Krakouer works in a cultural mentoring role with the National Disability Insurance Scheme and Department of Family Fairness and Housing as a contractor. Phillip Krakouer manages in this role by limiting his time to management and assisting others who, like him, are suffering from psychiatric injury.*
- xi. *If it were not for the racial abuse and the injuries he sustained during the course of his employment in matches in the Australian Football Competition, it is likely that Phillip Krakouer would have gone on to receive further education, and then to a role as a counsellor or psychologist, earning significantly more than Phillip Krakouer has been able to earn since retiring from the Australian Rules Football Competition in around 1992.*
- xii. *Further particulars will be provided in due course by way of a List of Special Damages.*

As to Neil Winmar:

- i. *Physical injury by spectators abusing him.*
- ii. *Psychiatric injury.*
- iii. *Post-Traumatic Stress Disorder.*
- iv. *Depression.*
- v. *Anxiety.*
- vi. *Neil Winmar does not require a Significant Injury within the meaning of Part VBA of the Wrongs Act 1958 (Vic) in this proceeding, as this is a claim where the conduct alleged 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 1958 (Vic). That the physical and/or racial abuse is an intentional act done with intent to cause injury can be inferred from the nature of the conduct itself. The plaintiffs refer to and repeat the particulars subjoined to paragraph 95 above.*
- vii. *On retiring from the Australian Rules Football Competition in or around 1999, Neil Winmar's working capacity has been*

limited as a result of his psychiatric injuries. Neil Winmar played Australian Rules Football for several years in lower leagues, and has undertaken mining, removalist, shearing and traffic control work. He also worked for a job network company, Nortec.

- viii. *Because of his psychiatric injuries, Neil Winmar has been unable to work for the past several years, has no current work capacity, and is unlikely to be suitable for employment on the open labour market in the future.*
- ix. *If Neil Winmar did not suffer the injuries set out in particulars (i) to (v) above, he would likely have gone on to have one or more successful small businesses, particularly in the Indigenous plant nursery area as well as working in leadership roles mentoring vulnerable young Indigenous persons.*
- x. *Further particulars will be provided in due course by way of a List of Special Damages.*

As to the Abused AFL Players:

- i. *Particulars of the Abused AFL Players' losses and damage will be provided after the determination of the common question at the initial trial of the proceeding.*

D. NEGLIGENCE – FAMILY GROUP MEMBERS

D1. Duty of Care

Risk of harm

98. At all material times throughout the Relevant Period, there was a risk that exposing the first plaintiff and Family Group Members to distressing circumstances arising from the Abused AFL Player's exposure to physical and/or verbal racist abuse by Players or spectators whilst participating in the Australian Rules Football Competition may cause psychological injury and/or psychiatric injury to the first plaintiff and to the Family Group Members (**Family Risk of Harm**).

Particulars

- i. *The plaintiffs refer to and repeat paragraphs 78 to 82 above and the particulars subjoined to those paragraphs.*
- ii. *The Family Group Members had a deep emotional and interpersonal attachment to the Abused AFL Players, by virtue of their close relationship or kinship with the Abused AFL Players.*
- iii. *Further particulars may be provided following the filing of expert evidence.*

Vulnerability and reliance

99. At all relevant times, the first plaintiff and Family Group Members were vulnerable to the Family Risk of Harm arising from any failure of the VFL or AFL (as applicable) to control, direct, coordinate and conduct the Australian Rules Football Competition with reasonable skill and/or to protect the Abused AFL Player from the Abuse Injuries Risk of Harm.

Particulars

- i. *Vulnerability and reliance arose by reason of the inability of the Family Group Members to control how the Australian Rules Football Competition was conducted. The Family Group Members had no control over the Rules and whether they would be enforced. They had no control over where the football matches were played, the configuration of the grounds and whether they were protected or not. The Family Group Members were reliant on the VFL and AFL (as applicable) to provide the Abused AFL Players with a place which was safe from racial abuse in which to play football matches as part of the Australian Rules Football Competition.*
- ii. *Further particulars may be provided following the filing of expert evidence.*

100. At all relevant times, when the Abused AFL Players were participating in the Australian Rules Football Competition, the first plaintiff and Family Group Members were reliant on the VFL or AFL (as applicable) to provide the Abused AFL Players with a place which was safe from racial abuse in which to play football matches as part of the Australian Rules Football Competition and to protect the Abused AFL Player from the Abuse Injuries Risk of Harm.

Particulars

- i. *The particulars subjoined to paragraphs 82 and 99 above are repeated.*

VFL or AFL knowledge

101. The plaintiffs refer to and repeat paragraphs 83 to 84 as pleaded herein.
102. At all material times throughout the Relevant Period, the VFL or AFL (as applicable) knew or ought to have known:
- (a) that the first plaintiff and the Family Group Members had a deep emotional and interpersonal attachment to the Abused AFL Players;
 - (b) by reason of the deep emotional and interpersonal attachment to the Abused AFL Players, of the Family Risk of Harm, as pleaded in paragraph 98 above; and

- (c) that the first plaintiff and Family Group Members were vulnerable to and reliant on the VFL or AFL (as applicable) in the circumstances pleaded in paragraphs 99 and 100 above.

Particulars

- i. *As to (a), the VFL or AFL (as applicable) knew or ought to have known of those matters by virtue of the close relationship or kinship with the Abused AFL Players. The Abused AFL Players exhibited signs of stress or trauma during and after match play by reason of their exposure to physical and/or verbal racist abuse by Players and spectators including psychological distress, depression, anxiety, physical fights, alcohol and/or drug abuse.*
- ii. *As to (b) the plaintiffs refer to and repeat paragraphs 78 to 83 above and the particulars subjoined to that paragraph. The VFL or AFL (as applicable) knew or ought to have known of the Family Risk of Harm by virtue of the close relationship or kinship with the Abused AFL Players. The Abused AFL Players exhibited signs of stress or trauma during and after match play by reason of their exposure to physical and/or verbal racist abuse by Players and spectators including psychological distress, depression, anxiety, physical fights, alcohol and/or drug abuse.*
- iii. *As to (c), the particulars subjoined to paragraphs 82 and 99 above are repeated.*
- iv. *Further particulars may be provided following discovery and the filing of expert evidence.*

VFL or AFL control

103. The plaintiffs refer to and repeat paragraph 85 as pleaded herein.

Duty of care

104. In the premises, at all material times, the VFL and AFL (as applicable) owed a duty to each of the first plaintiff and the Family Group Members to take reasonable care to to avoid or minimise the Family Risk of Harm (**Family Duty of Care**).

D2. VFL and AFL standard of care

105. At all material times in the Relevant Period, the Family Risk of Harm:

- (a) was reasonably foreseeable by the VFL or AFL (as applicable); and
- (b) was not insignificant.

Particulars

- i. The plaintiffs refer to and repeat paragraphs 78 to 83 above and the particulars subjoined to those paragraphs.*
- ii. The Abused AFL Players exhibited signs of stress or trauma during and after match play by reason of their exposure to physical and/or verbal racist abuse by Players and spectators including psychological distress, depression, anxiety, physical fights, alcohol and/or drug abuse.*
- iii. There was a deep emotional and interpersonal attachment to the Abused AFL Players, by virtue of their close relationship or kinship with the Abused AFL Players. The VFL or AFL (as applicable) knew or ought to have known of the close relationship or kinship. The plaintiffs refer to and repeat paragraph 102(a) above and the particulars subjoined to the paragraph.*
- iv. In an article published on 9 May 1984 in The Courier, Mr Muir's mother was reported as being very "bitter" about the suspension of her son for 12 weeks in what was widely regarded as retaliation by Mr Muir in response to racial abuse directed at him.*
- v. Further particulars may be provided following the filing of expert evidence.*

106. In the premises, by reason of the matters pleaded in paragraph 85 above, a reasonably prudent controlling sports body in the position of the VFL or AFL (as applicable) would have taken the Precautions as pleaded in paragraph 90 above against the Family Risk of Harm.

Particulars

- i. The plaintiffs refer to and repeat the particulars subjoined to paragraph 90 above.*
- ii. Further particulars may be provided following the filing of expert evidence.*

D3. Breach of the Family Duty of Care

107. At all material times throughout the Relevant Period, the VFL and AFL (as applicable) failed to take reasonable care to implement, or adequately implement, the Precautions as pleaded in paragraph 90 above.

Particulars

- i. The plaintiffs refer to and repeat the particulars subjoined to paragraph 90 above.*
- ii. Further particulars may be provided following the filing of expert evidence.*

108. In the premises set out in paragraph 107 above, on and from the start of the Relevant Period, the VFL and AFL (as applicable) breached the Family Duty of Care.

D4. Breaches of duty caused loss and damage

109. By reason of the breaches of the Family Duty of Care, the first plaintiff and Family Group Members were exposed to and subject to distressing circumstances arising from the Abused AFL Player's exposure to physical and/or verbal racist abuse by Players or spectators whilst participating in the Australian Rules Football Competition.

Particulars

- i. *The plaintiffs refer to and repeat paragraphs 78, 94 and 96 above and the particulars subjoined to the paragraphs.*
- ii. *Phillip Krakouer witnessed his brother James Krakouer being racially abused (verbally and physically) by Players and spectators. This included:*
 - A. *by Players racially abusing James Krakouer in the presence of Phillip Krakouer whilst the two were playing in football matches as part of the Australian Rules Competition including at Princes Park and Victoria Park; and*
 - B. *when Phillip Krakouer was not playing in football matches, but was watching them and he witnessed spectators and Players racially abuse James Krakouer, in particular at Victoria Park, Moorabbin Oval and Arden Street.*
- iii. *The plaintiffs refer to the instances of racial abuse and its consequences which were the subject of media reporting as set out in Schedule C to this pleading.*
- iv. *The physical abuse included punching, hitting, kicking and spitting.*
- v. *The Abused AFL Players exhibited signs of stress or trauma during and after match play by reason of their exposure to physical and/or verbal racist abuse by Players and spectators including psychological distress, depression, anxiety, physical fights, alcohol and/or drug abuse, which was witnessed by the Family Group Members. Some Family Group Members witnessed their family member who was or is an Abused AFL Player being subjected to physical and/or verbal racist abuse by Players and spectators during or after match play.*
- vi. *Particulars of the exposure by Family Group Members will be provided after the determination of the common question at the initial trial of the proceeding.*
- vii. *Further particulars may be provided following the filing of expert evidence.*

110. In the premises, the breaches of the Family Duty of Care caused loss or damage to the first plaintiff and Family Group Members.

Particulars

- i. As to Phillip Krakouer, the particulars subjoined to paragraph 97 above are repeated.*
- ii. Particulars of the Family Group Members' losses and damage will be supplied after the determination of the common question at the initial trial of the proceeding.*

E. COMMON QUESTIONS OF LAW OR FACT

111. Whether the matters alleged in paragraphs 13 to 77 above (section B) occurred and/or were true during the Relevant Period.
112. Whether the Player Abuse Harm, the Player Abuse Strategy and the Spectator Abuse Harm, as pleaded at paragraphs 78 to 80 above and the Abuse Injuries Risk of Harm, as pleaded in paragraph 81 above existed during the Relevant Period.
113. Whether, whilst playing in football matches in the Australian Rules Football, the Abused AFL Players were:
- (a) vulnerable to the Player Abuse Harm, the Player Abuse Strategy, the Spectator Abuse Harm and the Abuse Injuries Risk of Harm, as pleaded in paragraph 82(a) above; and
 - (b) reliant on the VFL and AFL (as applicable) provide them with a safe place in which to play football matches as part of the Australian Rules Football Competition, as pleaded in paragraph 82(b) above.
114. Whether the VFL or AFL (as applicable) knew or ought to have known:
- (a) of the Abused AFL Players to the Player Abuse Harm, the Player Abuse Strategy, the Spectator Abuse Harm and/or the Abuse Injuries Risk of Harm, as pleaded in paragraph 83(a); and
 - (b) the Abuse Injuries Risk of Harm, as pleaded in paragraph 83(b) above.
115. Whether the VFL or AFL (as applicable) knew or ought to have known:
- (a) of the vulnerability of the Abused AFL Players to the Player Abuse Harm, the Player Abuse Strategy, the Spectator Abuse Harm and/or the Abuse Injuries Risk of Harm, as pleaded in paragraph 84(a) above; and/or
 - (b) of the Abused AFL Players' reliance on the VFL and AFL (as applicable) as pleaded in paragraph 84(b) above.

116. Did the VFL and AFL (as applicable) control, direct, coordinate and conduct:

- (a) the Australian Rules Football Competition, as pleaded in paragraph 85(a) above;
- (b) the Players, as pleaded in paragraph 85(b) above;
- (c) the financial payments, consideration and benefits payable or made available to Players, as pleaded in paragraph 85(c) above;
- (d) the terms of the Players' employment with Clubs, as pleaded in paragraph 85(d) above;
- (e) the conduct of football matches played in the Australian Rules Football Competition, as pleaded in paragraph 85(e) above;
- (f) matters of discipline and conduct complaints against Players, as pleaded in paragraph 85(f) above;
- (g) matters and discipline and conduct complaints against non-Players alleged to have contravened the Racial Vilification Rule, as pleaded in paragraph 85(g) above;
- (h) the Clubs, as pleaded in paragraph 85(h) above;
- (i) the umpires and coaches, as pleaded in paragraph 85(i) above;
- (j) the Grounds, as pleaded in paragraph 85(j) above;
- (k) the use of VFL and AFL (as applicable) intellectual property, as pleaded in paragraph 85(k) above;
- (l) the terms and conditions pursuant to which football matches were televised, broadcast or streamed, as pleaded in paragraph 85(k) above; and/or
- (m) the income derived by the VFL and AFL (as applicable), as pleaded in paragraph 85(m) above.

117. What are the principles to be applied in determining whether the relationship between the VFL or AFL (as applicable) and Players gives rise to a duty that:

- (a) is akin to, or analogous to, one of employment (the Abused Players' Akin-to-Employment Duty of Care)?
- (b) further and alternatively to sub-paragraph 117(a), is owed in circumstances where the VFL and AFL (as applicable) controlled, directed, coordinated and conducted the Australian Rules Football Competition in which the Players played football matches (the Abused Players' Principal Duty of Care)?
- (c) further and alternatively to sub-paragraphs 117(a) and (b), is a general duty (the Abused Players' General Duty of Care)?

118. What is the content of each of the Abused Players' Akin-to-Employment Duty of Care, the Abused Players' Principal Duty of Care and/or the Abused Players' General Duty of Care, as pleaded in paragraphs 86 to 88 above?
119. Was the Abused Injuries Risk of Harm:
- (a) reasonably foreseeable by the VFL and AFL (as applicable); and
 - (b) a not insignificant risk—
- as pleaded in paragraph 89 above?
120. For each of the Abused Players' Akin-to-Employment Duty of Care, the Abused Players' Principal Duty of Care and/or the Abused Players' General Duty of Care, what is the standard of care required of a reasonably prudent controlling sports body in the position of the VFL or AFL (as applicable) as it relates to:
- (a) the Abused AFL Players; and/or
 - (b) the Family Group Members?
121. Were the Precautions pleaded in paragraph 90 above precautions that a reasonably prudent controlling sports body in the position of the VFL and AFL (as applicable) would have taken against the Abuse Injuries Risk of Harm and/or the Family Risk of Harm?
122. Did the VFL and AFL (as applicable) breach the Abused Players' Akin-to-Employment Duty of Care, the Abused Players' Principal Duty of Care and/or the Abused Players' General Duty of Care by reason of the matters pleaded in paragraph 91 above?
123. Whether the Family Risk of Harm as pleaded in paragraph 98 above existed during the Relevant Period.
124. Whether the Family Group Members were vulnerable to the Family Risk of Harm arising from any failure of the VFL or AFL (as applicable) to control, direct, coordinate and conduct the Australian Rules Football Competition with reasonable skill and/or to protect the Abused AFL Players from the Abuse Injuries Risk of Harm, as pleaded in paragraph 99 above.
125. Whether the Family Group Members were reliant on the VFL or AFL (as applicable) to provide the Abused AFL Players with place which was safe from racial abuse in which to play football matches in the Australian Rules Football Competition, as pleaded in paragraph 100 above.
126. Whether the VFL or AFL (as applicable) knew or ought to have known of the matters pleaded at paragraph 102 above, being:
- (a) that the Family Group Members had a deep emotional and interpersonal attachment to the Abused AFL Players;

(b) by reason of the deep emotional and interpersonal attachment to the Abused AFL Players, of the Family Risk of Harm; and

(c) that the Family Group Members were:

(i) vulnerable to the VFL or AFL (as applicable) not providing; and/or

(ii) reliant on the VFL or AFL (as applicable) to provide;

the Abused AFL Players with a place which was safe from racial abuse in which to play football matches as part of the Australian Rules Football Competition and to protect the Abused AFL Player from the Abuse Injuries Risk of Harm?

127. What are the principles to be applied in determining whether a duty was owed by the VFL or AFL to Family Group Members?

128. Was the Family Risk of Harm:

(a) reasonably foreseeable by the VFL and AFL (as applicable); and

(b) a not insignificant risk—

as pleaded in paragraph 105 above?

129. Did the VFL or AFL (as applicable) breach the Family Duty of Care, as pleaded in paragraph 107 above?

AND THE PLAINTIFFS CLAIM on their behalf and on behalf of all group members:

A. Damages.

B. Interest pursuant to the *Supreme Court Act 1986* (Vic).

C. Costs.

D. Such further or other order as the Court determines is appropriate.

Date: 9 October 2025

M Szydzik

R V Howe

P G Hamilton

Counsel for the plaintiffs

Schedule A – Legislation – family and other relationships

- (i) *Civil Law (Wrongs) Act 2002 (ACT)* Part 3.2
- (ii) *Civil Liability Act 1936 (SA)* Part 6
- (iii) *Civil Liability Act 2002 (NSW)* Part 3
- (iv) *Civil Liability Act 2002 (TAS)* Part 8
- (v) *Civil Liability Act 2002 (WA)* Part 1B
- (vi) *Wrongs Act 1958 (Vic)* Part XI

Schedule B – Legislation – dependancy claims

- (i) *Civil Law (Wrongs) Act 2002* (ACT) Chapter 3
- (ii) *Civil Liability Act 1936* (SA) Part 5
- (iii) *Civil Proceedings Act 2011* (Qld) Part 10
- (iv) *Compensation (Fatal Injuries) Act 1974* (NT)
- (v) *Compensation to Relatives Act 1897* (NSW)
- (vi) *Fatal Accidents Act 1934* (Tas)
- (vii) *Fatal Accidents Act 1959* (WA)
- (viii) *Wrongs Act 1958* (Vic) Part III

Schedule C – media reporting of abuse of Indigenous Players

PART 1: MEDIA REPORTING OF ABUSE OF ROBERT MUIR

NO.	DATE	TITLE & PUBLICATION	DESCRIPTION
Note: See expert report of Associate Professor Matthew Klugman at paragraphs 49-58..			
1.	1978	‘Footy Slur Probe’ Unknown publisher	Muir responding with violence to racial vilification was raised at a Tribunal hearing in 1978 by player advocate Brian O’Shaughnessy. However, O’Shaughnessy also said “Muir is one of the few Aboriginal players who has got a bit of spirit and go – most of them haven’t. They turn it up”. “Aboriginal leaders are enraged at remarks made by Player’s advocate Brian O’Shaughnessy at VFL tribunal hearing”.
2.	1980	<i>The Truth</i> newspaper	Muir was consistently persecuted by opponents from the other 11 VFL Clubs, being hounded and goaded by opposition players and supporters every time he plays.
3.	1980	‘VFL Insult Crackdown’ Unknown publisher	Newspaper article titled “VFL insult crackdown” with sub-heading of “Muir baiting”. Notes that “VFL umpires have been instructed to crack down of players who continually taunt opponents.”
4.	09.05.1984	‘Racism problem in VFL’ The Courier	“Mrs Muir rang Aboriginal JP and family friend Mr Stewart Murray in Melbourne yesterday to get advice off him and what we can do about it because as far as I'm concerned it is a racist problem”.
5.	1984	‘Football racism a match ploy – Muir’ Unknown publication	Article explores at racism as a “professional tactic”. “Aboriginal VFL players are subjected to stinging racist insults every time they take to the field suspended St Kilda player Robert Muir said yesterday.”
6.	26.05.1985	‘Pelted Muir jumps fence’ Sunday Mail	Article details incident where Muir jumped fence to chase a spectator who threw cans at him.

7.	09.02.1988	‘MUIR the Saint who lost his halo’ The Sun	Muir referred to as the “wild man of the VFL”. Muir argues that he was also unfairly targeted by umpires. The article also states that his “rash of suspensions” brought his “short but spectacular career to a premature finish”.
8.	25.07.1989	‘No regrets’ The News	Muir states in article “I was only looking after myself”. States that Muir earned the unsavoury tag of “mad dog” due to his “on-field antics”. “There was the constant jibing and the racial slurs condemning his proud aboriginal heritage”. “Others would probably suggest had it not been for his temper, he would have gone a long way with his football career”. Muir also says in the article that “spectators have a responsibility too”. “They started throwing stuff at me from over the fence, and it was getting dangerous”.
9.	30.04.1993	‘Why I quit’ The Herald Sun	Article discusses that Muir has experienced “more than his share of racial taunts while playing football” and Muir’s notorious short fuse in football as a result. Muir says “It’s been going on for years and Collingwood has always been the worst especially at Victoria Park”. Muir also says “Blokes knew I had a short fuse so they would try to put me off my game”.
10.	20.03.1994	“Back from the brink” Herald Sun	“Depression drove him to the edge of extinction but he didn't drop over - we nearly lost him”. Article discloses that Muir was recently admitted to hospital in a critical condition. “Robert Muir will be remembered by football fans for many things, but probably most as the Aboriginal Saint in the Jeans era who got so mad that he stomped the turf, checked the umpire and pelted his mouthguard so hard that it went about a metre underground”. “Now Robbie is a picture of frustration, he’s like a muzzled dog on a pie cart”.
11.	06.08.1995	‘The sad waste of Robbie Muir's gift’ Herald Sun	Details that Muir only played for St Kilda 20 times over three years due to suspensions. “I do regret the way my career turned out”. The article goes on to say that Muir says “the racism that has become such an issue in the past few years was

			always the underlying factor in his many tribunal appearances”.
UNDATED ARTICLES			
12.	undated	‘Come on mate, He’s outed but he’s not down’ Unknown publisher	Article states that every opposition Club knows and plays on the knowledge that Muir has a flaw in his game, that is, losing his self-control.
13.	Undated	‘Heroes with Haloes: St Kilda’s 100 greatest - Robert Muir 1974-1984’ Part 1 - St Kilda FC	St Kilda Football Club document. “Sadly wasted football talent” “Muir says that the racism that has become such an issue in the last few years was always the underlying factor in his own litany of suspension and Tribunal appearances”.
14.	Undated	‘Heroes with Haloes: St Kilda’s 100 greatest - Robert Muir 1974-1984’ Part 3 - St Kilda FC	St Kilda Football Club document. Discusses Ray Shaw incident where he allegedly spat in Muir’s face.
15.	Undated	‘Muir: give me a break’ Unknown publisher	Article examines various instances of abuse and retaliation throughout Muir’s football career including incident involving Ray Shaw allegedly spitting in his face. Suspended 42 matches. Refers to the “mad dog” nickname.
16.	Undated	‘Probe Spit Claim’ Unknown publisher	“The VFL should waste no time in investigating the spitting claims at the Robert Muir tribunal hearing on Monday”.
17.	Undated	‘It won’t be easy Muir’ Unknown publisher	Article questions whether Muir will be able to return to VFL football due to “general attitude” and “he looks a little heavier”. References Muir’s “irresponsible antics”. “Muir must forget about racial slurs which opposition players can be

			inclined to throw at him and worry about the ball”.
18.	Undated	Unknown publisher	Collection of snippets in relation to Ray Shaw incident. Further details tribunal hearing in relation to incident with Ray Shaw.
19.	Undated	‘Muir Bating’ Unknown publisher	“St Kilda players are enraged at the persecution of their fiery star Robert Muir”. “Muir's colleagues claim he was goaded beyond control by Collingwood last Saturday”. “It happens to Robert all the time”.
20.	Undated	‘Misleading tag on a good guy’ Unknown publisher	Muir says “it makes you a marked man with the crowd - and what must the umpires think”. Article states that Muir had a go at Syd Jackson when called a “black so-and-so”.
21.	Undated	Unknown publisher	Profile on Robert Muir. “When he came to St Kilda he found however, that his colour made him a target for gamesmanship. Whereas as a little boy he had taken odd remarks as a joke, he no longer felt that way about things said in his hearing, and at him on the field, around the fence.”

*** Copies of the articles are available on request.

PART 2: MEDIA REPORTING OF ABUSE OF THE KRAKOUER BROTHERS DURING THE PERIOD 1982 TO 1990

NO.	DATE	TITLE & PUBLICATION	DESCRIPTION
1.	1982	‘Jim and Phil turn it on’ Unknown	“The Krakouer’s have been copping plenty of abuse from fans and opposition players because of the colour of their skin”
2.	19.04.1982	‘Krakouer explodes a can’ The Sun	The article states that Krakouer was shaken up after having a can thrown at him. The article itself is undated other than the handwritten date of 19 April. The date is 19 April 1982 because the articles states NMF Club won the match won by 17 points at Windy Hill.

			North Melbourne won at Windy Hill on 17.04.1982 by 17 points. The article was then written two days later.
3.	26.04.1982	‘Blacks in the Big League’ The Age	James Krakouer was hit by a beer can at a game against Essendon when he was standing in the goal square. Every time he went near the boundary line, he could clearly hear the chorus of voice.
4.	10.06.1982	‘Krakouer two must not crack’ The Sun	Caption to the image of Krakouer and James Krakouer says “abuse is a compliment to their ability”. “When an opponent can’t beat you in the physical duels, he will scratch at the veneer looking for a chink in your armour”.
5.	11.06.1982	‘North Welcomes Krakouer Back’ The Canberra Times	Krakouer has an “after-match clash” with Carlton’s Rod Austin.
6.	19.09.1983	‘North denies umpire’ The Age	States that Krakouer “was so upset about being reported in that ferocious first-quarter brawl that he asked North Melbourne secretary John Dugdale to speak to umpires...” Photo in article has the following caption “Phil Krakouer (North) and Bill Duckworth (Essendon) shape up as tempers boil over in the first quarter on Saturday.”
7.	12.05.1984	‘Breathless Collingwood aims to consolidate’ The Canberra Times	James Krakouer suspended for three matches for striking Collingwood’s Greg Phillips. [this was in response to persistent racist taunts]
8.	10.07.1984	‘Jim Krakouer suspended – Greg Phillips incident’ The Canberra Times	James Krakouer suspended for three matches for striking Collingwood’s Greg Phillips. [this was in response to persistent racist taunts]
9.	30.03.1985	‘Night out for Woods’	Article states that “Jimmy Krakouer was one of the few to make an adjustment, but despite a brilliant goal at the six-minute mark of the final quarter, his undoubted football skills were forgotten by a crowd

		The Age	intent on booing him every time he touched the ball.” The match was against Collingwood in front of 65,000 people at the MCG.
10.	04.09.1985	‘The Trials and Triumphs of Jimmy Krakouer’ The Age	James Krakouer reflects on his 1985 season saying he could hear the abuse from the crowd.
11.	30.05.1986	‘A union of skills that passes understanding’ The Age	“But the feelings habitually directed towards the Krakouers go beyond the exuberant ill-will traditionally borne by VFL supporters for players from other clubs. It is rare that there is not booing when the Krakouers approach the ball. You cannot help but suspect that they violate too many stereotypes and preconceptions, that things would be better if they were mindful of their place... any discussion about the Krakouers, both of their unique skills and the reaction they evoke, must necessarily countenance their Aboriginality. It is not something which North Melbourne officials encourage, as they believe, with reason, that any highlighting of their race only serves only to increase the Krakouers' burden. But to deny that their origins are part of what they are is false as the old fiction that rock'n'roll began with Bill Haley and was the creation of white America.”
12.	1987	Colin Tatz (1987) “Aborigines in Sport” p 72.	Refers to abuse endured by the Krakouer brothers, specifically that “it took some time for them to ignore racial taunts and keep their tempers”.
13.	20.04.1987	‘Schimma in control for landmark game’ The Age	“No matter how much abuse these two footballers receive from the crowd, the Krakouers seem to broaden the horizons of the game with every match they play”.
14.	04.03.1990	‘Black but unbowed’ Sunday Herald	“Every time they go out on the field they are called black bastards. It's illegal to do that everywhere except the football field, where it is considered good tactics.” Article provides a detailed history of Krakouer’s and James Krakouer’s time before moving to Melbourne to play VFL. There is reference to an old news article which spoke about

			the Krakouer brothers' parents walking across the Nullarbor. The only time James Krakouer "gets into trouble" is when he is defending someone from a racist jibe or physical attack on his brother.
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*** Copies of the articles are available on request.

**PART 3: MEDIA REPORTING OF ABUSE OF NEIL WINMAR DURING THE PERIOD 1987
TO 1999**

NO.	DATE	TITLE & PUBLICATION	DESCRIPTION
1.	15.08.1990	'Winmar to face Tribunal' The Canberra Times	Article details incident between Winmar and Dermott Brereton in round 19, 1990 and forthcoming Tribunal hearing in relation to Winmar allegedly assaulting Brereton. [This was in response to racial taunts perpetrated by Brereton against Winmar, which Brereton has since acknowledged and apologised for]. Describes charges against Winmar for "kicking Brereton" and "assaulting Brereton with a hand to the face and eyes".
2.	17.08.1990	'Winmar suspended for 10 matches' The Canberra Times	Describes findings of the Tribunal with respect to incident between Winmar and Brereton in round 19. Winmar is found guilty of kicking and assaulting Brereton and thereafter suspended by AFL Tribunal for 10 weeks. The tribunal delivered the ban, the most severe senior suspension since John Bourke in 1985 for hitting an umpire. Article details Brereton's and Winmar's recount of the incident. Winmar pleaded not guilty to kicking Brereton but admitted to the second charge of assaulting him to the face with his left hand.
3.	22.08.1990	'Brereton's conclusive evidence' The Canberra Times	Article details the Tribunal's finding regarding incident between Winmar and Brereton in round 19. "Winmar pleaded guilty to a charge of assaulting the face of Brereton but not guilty to a further charge of having landed a swift kick to that portion of the anatomy most likely to cause a change in facial expression."
4.	11.08.1992	'Williams and Winmar clear' The Canberra Times	Discusses Winmar's clearance from the Tribunal in the previous night. Winmar was found not guilty of charging Adrian Gleeson in the second quarter after the Tribunal deemed contact was not late or made in a violent manner. References incident in which Winmar faced ten weeks from the Tribunal for "kicking and assaulting" Brereton at his last tribunal date in 1990.
5.	18.04.1993	'I'm Black and I'm proud of it'	Front page of the Sunday Age reports Winmar lifting his guernsey and saying "I'm black and

		The Age	proud of it” at the end of the match on 17 April 1993 against Collingwood at Victoria Park. During the course of the match, Winmar received racial taunts from the crowd, particularly perpetrated by Collingwood fans. Article reports fans spitting at Winmar.
6.	18.04.1993	‘Fresh Saints humble Pies to stop run’ The Canberra Times	Discusses hostility of Victoria Park grounds for St Kilda players following racial abuse experienced by Winmar and McAdam, quoting “Victoria Park has never been a happy hunting ground for the Saints”. St Kilda Coach Ken Sheldon says: “Clearly to come here to Victoria Park is a psychological problem... it has always been for other clubs too.”
7.	20.04.1993	‘Racism should be made reportable’ The Age	Editorial in the Age following the Nicky Winmar guernsey photo. Article implores that “there is no place for racism in football and the AFL must do everything in its power to make sure its players – and if possible, spectators – understand this.”
8.	24.04.1993	'Racial taunts part of the game, say footy fans' The Age	In response to Winmar’s stand on 17 April 1993 at Victoria Park, Race discrimination Commissioner of the Human Rights Commission, Irene Moss, calls for sporting clubs to expel their members for racist comments. “Ms Moss said it was difficult for clubs and sporting organisations to respond to general crowd behaviour that did not threaten security, but if the people responsible for racist abuse were club members then clubs could deal with offenders... Clubs that felt strongly about curbing racism at sporting events could draw up guidelines for behaviour and suggest measures to deal with offences.” Article says “Essentially, it seems that virtually any abuse is acceptable and that no sign of sensitivity is to be shown in receiving such abuse, The catch is that the prejudice thrown at the opposition doesn’t become an issue with your own team.”
9.	25.04.1993	‘Racism a blight on both sides of the fence’ The Age	Article details how racism is a blight on the game and had become intrinsic to Australian sporting culture. Includes fan-write-ins in support of Winmar, condemning racist fans. Some call out Collingwood for not enforcing the issue.
10.	27.04.1993	‘Race talk puts Pies’ boss on outer’ The Canberra Times	Details racial abuse from Collingwood fans targeted at Winmar in Victoria Park game against Collingwood. Details aftermath of abuse and response of Collingwood President, Allan McAlister who publicly made statements:

			• That he [McAlister] did not hear the abuse coming from his players towards Winmar and McAdam. • “As long as they conduct themselves like white people, well, off the field, everyone will admire and respect them.” When asked to clarify, McAlister replied “As long as they conduct themselves like human beings, they will be all right. That’s the key”. • McAlister also visited the Melbourne offices of Aborigines Advancement League to apologise for his comments and speak to president Robert Nicholls. Details Nicholl’s disappointment in response from McAlister and AFL. Discusses widespread denouncement of racial slurs in football from the Indigenous community and AFL Clubs, including Footscray Football Club and commentary from then club president, Peter Gordon.
11.	07.05. 1993	‘On the other foot’ The Australian Jewish News	With reference to the well documented racial abuse experienced by Winmar, article discusses lack of action surrounding racial taunts targeted at black footballers at the hands of players and spectators. “Little is being done to stamp out racist sledging by players or abuse by spectators. The trouble is that most sports administrators in this country become very uncomfortable when racist taunts and slurs affect their games. They simply do not know how to handle the problem and therefore take the easy way out by ignoring its existence.”
12.	07.05.1993	‘ADC slams footy racism’ The Australian Jewish News	Anti-Defamation Commission calls on AFL to “act immediately” to rid the AFL of on-field racism, citing Winmar incident in its reasoning.
13.	14.05.1993	‘The sorry record of racism in sport’ The Canberra Times	Discusses that “Winmar and other incidents were discussed on a television sports show during which McAlister added injury to insult with his statement about Aborigines conducting themselves” like white people”. Labels McAlister’s comments as “profoundly offensive” by comparison to a “1950’s assimilation mentality”. Discusses the harm of “a powerful figure in the administration of Australian Football [referring to McAlister] to say this consciously”.

			Refers to then Prime Minister's (Paul Keating) comments in support of Winmar's and all Indigenous players' experiences of adversity in the league.
14.	1993	Channel 7 News segment (via YouTube) https://www.youtube.com/watch?v=IIOd_cYOtQ58 Timestamp: 00:42	Details Gilbert McAdam's and Nicky Winmar's experiences of racial abuse in 1993 at Victoria Park.
15.	1993	National Indigenous Television segment 'Living Black', 29 September 2014 (via YouTube) https://www.youtube.com/watch?v=eeuMBo99Edo Timestamp: 19:00	Crowd can be seen yelling abuse at Winmar. Winmar says he took four weeks off playing football following incident. Winmar says he received death threats. Club supported him and he returned to play four weeks later.
16.	11.02.1994	'Big Men' understands taunts, says McAlister' The Age	Details commentary of Collingwood president Allan McAlister who claims that racist taunts on the field were merely a tactic that only "big men" understood. McAlister is quoted saying "you'll never stop the remarks of one player to another to try and get an edge on him... that's what it's all about, they're big men, they're big boys, they know what it's all about... I'm sure if an Aboriginal player found some chink in an opponent's armour if he's white [he'd exploit it]... it's just sledging in AFL football, but the real plus about it is the moment they finish and get off the field it's all forgotten, they're not interested." Article contends that Aboriginal players who have endured racial taunts, such as Nicky Winmar and Chris Lewis, would not agree that "it's all forgotten".
17.	13.02.1994	'For 100 minutes, racism is defeated' The Age	Image of Winmar described as "Nicky Winmar dramatised on-field racism last year. He struggled at Waverley Park yesterday."
18.	10.04.1994	'Less abused and I'm proud of it' The Age	Less than a year after his stand at Victoria Park, Winmar says his stand led to a "drop in racist slurs against Aboriginal players". Winmar is quoted saying "you still hear it in the crowd... but I hear other people saying 'don't worry about him, Nicky... there are a lot of white people telling me that... A lot of Collingwood supporters have written

			letters to me apologising, saying they were ashamed of what happened and that they support me. I really respect people for doing that... I think a lot of people now understand why I did it. It has made Aboriginal people stand up tall. We've been in the shadows for so many years. But since Mabo and what I did last year, saying I'm black and proud of it – that's what I am – people are starting to take notice."
19.	22.04.1994	'Tigers blood-letting – Schwab the first victim' The Canberra Times	Mention of new AFL television commercial which allegedly excluded Aboriginal players. "In a letter in yesterday's Herald Sun newspaper, [Cathy] Freeman said the AFL had ignored Aboriginal footballers Nicky Winmar, Chris Lewis, Gilbert McAdam, Michael Long and Brownlow Medallist Gavin Wanganeen, in a new television commercial". Ross Oakley says that "the choice of AFL footage for the campaign was based on what was considered to be the best action available – not the colour of participants."
20.	29.04.1995	'Bombers' racism claims upset Collingwood boss' The Canberra Times	Following the 1993 incident at Victoria Park which "hurt" Collingwood, article details further defensive commentary of McAlister including: • "Collingwood has done more for the Aboriginal community in the last two years than any other AFL club" • "We have a scholarship for young Aborigines, we played an All-Star team in Darwin last year and we're playing up there again next year." • "We have a young Aborigine at the club, Robbie Ahmat, and there is no racism at Collingwood."
21.	11.03.1995	'AFL draws criticism with code of conduct proposal' The Canberra Times	Discusses criticism surrounding the AFL's proposed code of conduct which supposedly clamps down on racial taunts. With reference to abuse faced by Winmar in 1993 at Victoria Park, Ross Oakley says "the proposal is aimed to stamp out racism which surfaced two years ago when brilliant St Kilda Aboriginal Nicky Winmar was taunted by a Victoria Park crowd in a match against Collingwood".
22.	30.04.1995	'Racist slur row, Pies boss, there is no proof' The Age	In relation to the 1993 incident at Victoria Park on 17 April 1993, Winmar said he "would not react the way he did last time but would complain through official channels".

23.	14.08.1995	‘Top pie fails to counter racism’ The Age	Article discusses that Collingwood President, Allan McAlister, fails to tackle the issue of racism within Collingwood, despite “incidents involving Nicky Winmar and Michael Long, despite censure from the broader community, despite AFL legislation initiated by the Winmar affair, the club and its supporters remain in contempt of the insidiousness of racism and the dangers of trivialising it. Contends the banner labelled “sticks and stones may hurt my bones but names will never hurt me” was evidence that “racism is sanctioned at Victoria Park”.
24.	21.04.1996	‘On God, sex and drugs’ The Age	In “the most extensive poll of AFL footballers ever conducted, attracting more than 150 players, or 23 percent of the competition”, in 1992 (during Winmar’s playing period), 70 percent of players said they were unaware of any racism in football, while 36 percent admitted to having made racist remarks on the field. In 1996, 21 percent admit to having racially sledged an opponent, while 91 percent believe they are less likely to use racial abuse than five years ago.
25.	1997	Channel 7 News Segment – Special on Winmar’s 200th AFL game (via YouTube) https://www.youtube.com/watch?v=YpojM4wIidc Timestamp: 00.36	Segment generally highlights Winmar’s professional career success in the AFL. Notes Winmar as the first indigenous player to play 200 AFL games. Segment discusses Winmar’s well publicised “controversy” as his “proud Aboriginal heritage has often seen him dragged into the headlines”.
26.	19.08.1998	‘Goodbye Nicky, I’m Sorry’ The Age	Dermott Brereton writes public apology for racially abusing and intentionally provoking Winmar and other Indigenous players with reference to round 19 of 1990. “Of all the tribunal sentences I received, I was never suspended for what I see now as a cowardly attack. If there was something I could change from my career, it would be the ugly comments I used to put those two players (Winmar and West Coast’s Chris Lewis) off their games, in what we thought back in those days was a part of the game,” in relation to the suspension Winmar received Brereton went on to write “I was the one who should have received a penalty. I’m ashamed of what I did back then to provoke Nicky.”
27.	20.08.1998	‘Winmar victim of friendly fire’ The Age	Peter Jess (Winmar’s player agent) says (about Winmar): “Unfortunately, he reacts in a way that, you know, we have seen quite a lot of these people do and at the end of the day that’s why our jails are

			full of them (aborigines)” and “What we have in terms our, you know, white society, we have certain ways that we deal with things and unfortunately, you know, Nicky doesn't have those same level of skills”.
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*** Copies of the articles are available on request.