



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

S ECI 2023 04323
Case: S ECI 2023 04323
Filed on: 14/11/2025 04:20 PM

BETWEEN:

Phillip Brent Krakouer

First Plaintiff

Neil Elvis Winmar

Second Plaintiff

and

Australian Football League (ACN 004 155 211)

Defendant

DEFENCE

Date of document: 14 November 2025
Filed on behalf of: The Defendant
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In answer to the plaintiffs' amended statement of claim dated 9 October 2025 (**ASOC**), the defendant (**the AFL**) says:

A. THE PLAINTIFFS AND GROUP MEMBERS

Group members

1. As to paragraph 1, the AFL:

a. refers in this defence to:

- i. "Abused AFL Players" (as defined in the ASOC) as **player group members**;
- ii. "Australian Rules Football" as **Australian Football**; and

- iii. “Australian Rules Football Competition” (as defined in the ASOC) as the **AFL Competition**, being the elite men’s Australian Football competition conducted by the AFL (known as the VFL until 23 January 1990 and the AFL on and from 24 January 1990);
 - b. says:
 - i. that paragraph refers to the period between May 1980 and the date of the ASOC (being 9 October 2025);
 - ii. the ASOC uses the term “Relevant Period”, which is not defined but appears to be an intended reference to the same period;
 - c. refers to paragraphs 112 to 117 below;
 - d. otherwise does not admit the allegations therein.
- 2. The AFL does not know and therefore does not admit paragraph 2.

The first plaintiff and James Krakouer

- 3. The AFL admits paragraph 3.
- 4. The AFL admits paragraph 4.
- 5. The AFL admits paragraph 5.
- 6. As to paragraph 6, the AFL:
 - a. admits that from around 1982 to in or around 1992, the First Plaintiff was registered with the defendant to play Australian Football in the AFL Competition;
 - b. otherwise denies the allegations therein.
- 7. The AFL admits paragraph 7.

8. As to paragraph 8, the AFL:
 - a. as to sub-paragraph 8(d):
 - i. admits that from around 1982 to in or around 1992, Mr James Krakouer was registered with the defendant to play Australian Football in the AFL Competition;
 - ii. otherwise denies the allegations therein;
 - b. otherwise admits the allegations therein.

The second plaintiff

9. The AFL admits paragraph 9.
10. The AFL admits paragraph 10.
11. The AFL admits paragraph 11.
12. The AFL admits paragraph 12.

B. THE DEFENDANT AND THE AFL COMPETITION

Corporate governance

13. As to paragraph 13, the AFL:
 - a. admits sub-paragraph 13(a);
 - b. admits sub-paragraph 13(b);
 - c. admits sub-paragraph 13(c);
 - d. as to sub-paragraph 13(d):
 - i. admits that it has been responsible for conducting the AFL Competition known as “the VFL” from the commencement of the Relevant Period and as “the AFL” on and from 24 January 1990;
 - ii. refers to and repeats paragraphs 14 to 77 below;

- iii. otherwise denies the allegations therein;
 - e. as to sub-paragraph 13(e):
 - i. admits that from:
 - 1. no later than 1985 to 23 January 1990, the VFL; and
 - 2. 24 January 1990 to the end of the Relevant Period, the AFL—
- entered into licensing agreements with Clubs to field teams to participate in the AFL Competition;

Particulars

Copies of various licensing agreements entered into by the AFL during the Relevant Period are in the possession of the AFL's solicitors and are available for inspection.

- ii. says that, pursuant to the licensing agreements, it granted each Club a licence to field a team or teams in the AFL Competition, subject to and on the terms and conditions of those licensing agreements;
 - iii. otherwise does not admit the allegations therein.
14. As to paragraph 14, the AFL:
- a. admits that, from the commencement of the Relevant Period to 1985, there was a VFL Board of Directors comprised of a director nominated by each Club participating in the AFL Competition;
 - b. says further that a purpose of the VFL Board of Directors was to provide governance to the AFL Competition;
 - c. otherwise does not admit the allegations therein.
15. As to paragraph 15, the AFL:
- a. admits that, on 12 December 1984, the VFL Board of Directors resolved to establish a Board of Commissioners to be called “**the Commission**”, comprised of one full-time Commissioner and four part-time Commissioners;

- b. otherwise does not admit the allegations therein.

16. As to paragraph 16, the AFL:

- a. says that from 12 December 1984 to 19 July 1993, the AFL Competition was administered:
 - i. under the direction of a Board of Directors, as representatives of the Clubs; and
 - ii. by the Commission;

Particulars

On 19 July 1993, the Board of Directors was dissolved and the Commission was appointed as the Board of Directors of the AFL for the purpose of the Corporations Law and license agreements made with the Clubs.

- b. refers to and repeats sub-paragraph 19(a) below;
- c. otherwise does not admit the allegations therein.

Articles of Association

17. The AFL admits paragraph 17.

18. As to paragraph 18, the AFL:

- a. refers to and repeats sub-paragraph 15(a) above;
- b. admits that, at the meeting of the VFL Board of Directors held on 12 December 1984, it was noted that a Special Sub-Committee of the VFL had recommended that the Commission be vested with such powers as the VFL 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 VFL;
- c. otherwise denies the allegations therein.

19. As to paragraph 19, the AFL:

- a. admits that, on 12 December 1984, the VFL Board of Directors resolved to entrust and confer upon the Commission all of the powers exercisable by it with the restriction that the Commission may not unless expressly authorised by the VFL exercise any of the following powers:
 - i. to admit any Club or to expel or suspend any Club from the VFL competition;
 - ii. to amalgamate or join in any other league;
 - iii. to take over the administration of any additional Club;
 - iv. to vary the basis of participation by Clubs in the VFL competition;
 - v. to vary the football grounds of any Clubs or to approve the move of any Clubs out of Victoria;
 - vi. to provide financial assistance to any Club (other than by payment of advances of final dividends expressly authorised by the Board of Directors) or to guarantee the obligations of any Club;
 - vii. to vary the basis upon which players are entitled to play for Clubs in the VFL competition;
 - viii. except as expressly authorised in any budget approved by the Board of Directors, to purchase or dispose of any capital asset with a cost of more than \$50,000;
 - ix. except as expressly authorised in any budget approved by the Board of Directors, to borrow any money otherwise than for the ordinary purposes of the VFL or to give any security for any such borrowing;
 - x. to undertake any major capital works (including major works in relation to existing assets of the VFL);
 - xi. to determine the distributions made to Clubs;

- xii. to exercise any of the powers of the VFL in owning or operating any television or radio station;
- xiii. to appoint the representatives of the VFL on the National Football League of Australia Limited or Australian Football Championships Pty Limited; or
- xiv. to amend or introduce any rules and regulations or player rules of the VFL or to amend any of the laws of the game;

Particulars

Minutes of Meeting of VFL Board of Directors dated
12 December 1984.

- b. otherwise denies the allegations therein.

20. As to paragraph 20, the AFL:

- a. as to sub-paragraph 20(a):
 - i. admits that, on 19 July 1993, the AFL adopted Articles of Association which, *inter alia*, provided that the number of Commissioners shall not be less than six nor more than eight, comprising non-executive Commissioners and executive Commissioners (including a Chief Executive Officer);
 - ii. admits that the 1993 Articles of Association (as defined in the ASOC) provided that the business of the AFL shall be managed by the Commission, subject to those Articles and to the provisions of the Corporations Law then in force;
 - iii. otherwise does not admit the allegations therein;

- b. as to sub-paragraph 20(b):
 - i. admits that the 1993 Articles of Association provided that insofar as the Commissioners were deemed to be directors of the AFL, the Commission shall be deemed to be the Board of Directors for the purpose of the Corporations Law as then in force;
 - ii. otherwise does not admit the allegations therein.
- 21. The AFL admits paragraph 21 and will rely on the full terms and effect of the 1993 Articles of Association at trial.
- 22. The AFL admits paragraph 22 and will rely on the full terms and effect of the 1993 Articles of Association at trial.
- 23. The AFL admits paragraph 23.
- 24. The AFL admits paragraph 24 and will rely on the full terms and effect of the Memorandum of Association at trial.
- 25. As to paragraph 25:
 - a. says that the terms of the Memorandum of Association did not vest exclusive powers and responsibilities in the AFL with respect to the matters set out in sub-paragraphs 25(a) to (g);
 - b. refers to and repeats paragraph 46 below;
 - c. otherwise admits the allegations therein and will rely on the full terms and effect of the Memorandum of Association at trial.
- 26. The AFL admits paragraph 26 and refers to the terms of clause 4 of the Memorandum of Association for their full force and effect.

Constitution

- 27. The AFL admits paragraph 27.

28. The AFL admits paragraph 28 and refers to the terms of clause 4 of the Constitution for their full force and effect.

29. As to paragraph 29, the AFL:

- a. admits that the Constitution provided that the number of Commissioners shall not be less than six, nor more than nine, comprising non-executive Commissioners and executive Commissioners (including a Chief Executive Officer), subject to the AFL providing otherwise by passing an ordinary resolution at an annual general meeting;

Particulars

Constitution, cll 60, 75.

- b. otherwise does not admit the allegations therein.

30. The AFL admits paragraph 30 and will rely on the full terms and effect of the Constitution at trial.

31. As to paragraph 31, the AFL:

- a. says that the terms of the Constitution did not vest exclusive powers and responsibilities in the AFL with respect to the matters set out in sub-paragraphs 31(a) to (h);
- b. otherwise admits the allegations therein, subject to the reference to:
 - i. “cl 5(g)” in sub-paragraph 31(e)(ii) meaning “cl 5(h)”;
 - ii. “solely towards the promotion and objective of the AFL” in sub-paragraph 31(h) meaning “solely towards the carrying out, furtherance or promotion of the objects of [the] AFL”;
 - iii. “Memorandum of Association” in sub-paragraph 31(h) meaning “the Constitution”.

32. The AFL admits paragraph 32, subject to the reference to:

- a. “clause 27(b)” in sub-paragraph 32(a)(ii) meaning “clause 27(a)”;

- b. “c11 13, 15(a)” in sub-paragraph 32(a)(iii) meaning “c11 25(a), 27(b)”.

Rules and disciplinary matters

33. As to paragraph 33, the AFL:

- a. admits that from:
 - i. the start of the Relevant Period to 23 January 1990, the VFL; and
 - ii. 24 January 1990 to the end of the Relevant Period, the AFL—
issued, amended and repealed various laws, rules and regulations in connection with the AFL Competition;
- b. says that the laws, rules and regulations referred to in the preceding sub-paragraph included:
 - i. The Laws of Australian Football, being the laws applicable to how a match of Australian Football is played, including in the AFL Competition (**Laws**);
 - ii. The Australian Football League Rules and Regulations and Player Rules being the rules that regulate the conduct of the AFL Competition (**Rules and Regulations**);
 - iii. The AFL Players’ Code of Conduct, being a code developed and agreed between the AFL and the AFL Players’ Association Limited (**AFLPA**) and which is one of the instruments governing the conduct of players in connection with the AFL Competition (**Code of Conduct**);
- c. otherwise does not admit the allegations therein.

34. As to paragraph 34, the AFL:

- a. admits that the Laws and Rules and Regulations from time to time provided for the matters set out at paragraph 34, and will rely on the full terms and effect of the Laws and Rules and Regulations (as in force from time to time during the Relevant Period) at trial;

- b. otherwise does not admit the allegations therein.
- 35. The AFL admits paragraph 35 and refers to and repeats sub-paragraph 33(b).
- 36. As to paragraph 36, the AFL:
 - a. admits that, during the Relevant Period, the Laws included a law to the effect that the field umpire shall report to the controlling body, including the AFL, every player who:
 - i. uses abusive, threatening or insulting language or behaviour against umpires during the progress of the football match or within or without the oval on the day of the match;
 - ii. uses abusive, threatening or insulting language or otherwise misconducts himself during the progress of the football match or within the oval on the day of the match;
 - b. admits that, during the Relevant Period, the Rules and Regulations in force from time to time contained a rule to the effect that no player shall act in a threatening or aggressive manner towards any other person or an umpire on or about the playing field prior to, during, or following the completion of a match (**Threatening Conduct Rule**);
 - c. otherwise denies the allegations therein.
- 37. As to paragraph 37, the AFL:
 - a. admits that, during the Relevant Period, the Laws in force from time to time provided, *inter alia*, that the use of abusive, threatening or insulting language or act of misconduct by a player during the progress of a match or within the oval of a match constituted a Reportable Offence;
 - b. admits that, during the Relevant Period, the Rules and Regulations in force from time to time provided that where the General Manager – Football Operations (or their nominee) alleges that a player has acted in breach of the Threatening Conduct Rule, the General Manager – Football Operations (or their nominee) could deal with such player as deemed fit in their absolute discretion;

- c. otherwise denies the allegations therein.
- 38. As to paragraph 38, the AFL:
 - a. refers in this defence to the “Racial Vilification Rule” (as defined in the ASOC) as the **Peek Rule**, being AFL Rule 35 now known as the ‘Peek Rule (Discrimination and Racial and Religious Vilification)’;
 - b. otherwise admits paragraph 38 and refers to the terms of the Peek Rule (as in force from time to time during the Relevant Period) for their full force and effect.
- 39. As to paragraph 39, the AFL:
 - a. refers to and repeats sub-paragraphs 37(a) and 37(b) above and sub-paragraph 41(b) below;
 - b. says that, after 30 June 1995, the Rules and Regulations in force from time to time provided that in the event it is alleged that a player has contravened the Peek Rule, an umpire, Club or player could lodge a complaint in writing with the person appointed from time to time as the Complaints Officer for the purposes of that rule; and
 - c. otherwise does not admit the allegations therein.
- 40. The AFL admits paragraph 40.
- 41. As to paragraph 41, the AFL:
 - a. refers to and repeats sub-paragraphs 36(a) and 39(b) above;
 - b. otherwise denies the allegations therein.
- 42. The AFL admits paragraph 42 and refers to the Rules and Regulations (as in force from time to time during the Relevant Period), the full terms and effect of which it will rely on at trial.
- 43. The AFL admits paragraph 43 subject to the reference to “the designated Complaints Officer at the Commission” meaning the Complaints Officer appointed for the purposes

of the Peek Rule, and refers to the terms of the Peek Rule (as in force from time to time during the Relevant Period) for their full force and effect.

44. The AFL admits paragraph 44 subject to the reference to “the designated Complaints Officer at the Commission” meaning the Complaints Officer appointed for the purposes of the Peek Rule, and refers to the terms of the Peek Rule (as in force from time to time during the Relevant Period) for their full force and effect.

Players

45. The AFL admits paragraph 45.
46. As to paragraph 46, the AFL:
- a. admits that, from no later than 12 December 1984, the VFL and AFL (as applicable) determined terms and conditions upon which persons may play for Clubs;
 - b. denies any allegation that it was unilaterally or solely responsible for determining the terms and conditions upon which persons may play for Clubs;
 - c. says further that the Clubs were the employers of their respective player employees;
 - d. says further that the terms and conditions upon which players played for Clubs participating in the AFL Competition were agreed as between each of those players and their Club, including pursuant to the terms as set out in their contracts of employment;
 - e. says further that from at least 1990, the AFL and/or the Clubs and the AFLPA, on behalf of the players, entered into Collective Bargaining Agreements (**CBAs**) in relation to the minimum terms and conditions of employment of players by Clubs, the full terms and effect of which it will rely on at trial.
47. The AFL admits paragraph 47.
48. The AFL admits paragraph 48.

49. The AFL admits paragraph 49 and says further that, at all times throughout the Relevant Period, the Clubs as employers of their respective players remunerated the players in accordance with the terms and conditions of their contracts of employment.

50. As to paragraph 50, the AFL:

- a. admits that, in 1980, the AFL introduced “Rule 11” into the Rules which provided minimum and maximum payment amounts for players based on their age and experience;

Particulars

The VFL 84th Annual Report for the 1980 season states that new Rule 11 was introduced following approval by the VFL Board of Directors (p 36).

- b. refers to and repeats paragraph 49;
- c. says that, by no later than 1990, payments to individual players by Clubs have been subject to the terms and conditions of CBAs entered into by the AFL or Clubs and AFLPA, the full terms and effect of which it will rely on at trial;
- d. otherwise does not admit the allegations therein.

51. As to paragraph 51, the AFL:

- a. admits that, in 1984, it introduced a maximum player payments amount (“salary cap”) that the Clubs could pay to players, calculated as a percentage of gate receipts and television revenue;

Particulars

The VFL 88th Annual Report for the 1984 season states that new VFL player rules include a maximum payer payments amount (salary cap) that clubs can pay (p 41).

- b. says further that the first year the salary cap was enforced was 1985;
- c. otherwise denies the allegations therein.

52. As to paragraph 52, the AFL:

a. admits that from:

- i. 1988 to 23 January 1990, the VFL; and
- ii. 24 January 1990 to until at least 2022 (save for a period between 1993 and 1995), the AFL—

entered into standard playing contracts (**SPCs**) with players and their respective Clubs, the full terms and effect of which it will rely on at trial;

b. otherwise does not admit the allegations therein.

53. As to paragraph 53, the AFL:

a. admits that, during the Relevant Period, the SPCs in force from time to time provided that the player and Club agree with the AFL to comply with and observe:

- i. the Rules and Regulations of the AFL;
- ii. the Memorandum of Association and Articles of Association or Constitution of the AFL (as applicable); and
- iii. any determinations or resolutions of the Commission;

to the extent such documents are not inconsistent with the CBAs;

b. admits that, during the Relevant Period, the SPCs in force from time to time provided that the player and the Club agree that restrictions on the freedom of players to transfer from one Club to another and restrictions on the total payments a Club may give or apply for the benefit of a player or a player's associates are necessary and reasonable;

c. otherwise denies the allegations therein.

54. The AFL admits paragraph 54 and says that from at least 1990 it and/or the Clubs and the AFLPA entered into CBAs.

55. The AFL admits paragraph 55.
56. The AFL admits paragraph 56 and will rely on the full terms and effect of the CBAs at trial.
57. As to paragraph 57, the AFL:
- a. as to sub-paragraph 57(a):
 - i. admits that the AFL had and has the power to bind the Clubs to the CBAs; and
 - ii. otherwise does not admit the allegations therein;
 - b. admits sub-paragraph 57(b);
 - c. admits sub-paragraph 57(c);
 - d. as to sub-paragraph 57(d):
 - i. denies any allegation that the CBAs set any payments and benefits to be made by the AFL directly to the players;
 - ii. otherwise does not admit the allegations therein;
 - e. as to sub-paragraph 57(e):
 - i. admits that, on and from November 1995 until at least 2022, the CBA contained terms to set the maximum aggregate amount or value of payments that may be given or applied in any year for the benefit of players with each Club;
 - ii. otherwise does not admit the allegations therein.
 - f. as to sub-paragraph 57(f):
 - i. admits that, on and from November 1995 until at least 2022, under the CBAs, the AFL agreed to make payments to a fund to be administered by the AFLPA, such funds to be expended by the AFLPA for purposes

including, but not limited to, player education and training, welfare and retirement benefits;

- ii. otherwise does not admit the allegations therein.

58. The AFL admits paragraph 58.

Clubs

59. As to paragraph 59, the AFL:

- a. refers to and repeats sub-paragraphs 46(b) to (d) above and paragraph 60 below;
- b. otherwise admits the allegations therein.

60. As to paragraph 60, the AFL:

- a. refers to and repeats sub-paragraph 13(e);
- b. otherwise does not admit the allegations therein.

Football matches, spectators and grounds

61. As to paragraph 61, the AFL:

- a. admits that from:
 - i. the start of the Relevant Period to 23 January 1990, the VFL; and
 - ii. 24 January 1990 to the end of the Relevant Period, the AFL—

scheduled matches to be played as part of the AFL Competition at the grounds listed in sub-paragraphs 61(i) to (xxviii);
- b. says that pursuant to agreements with the AFL, operators of those grounds (**ground managers**) were responsible for, *inter alia*, security, ground maintenance and crowd management;

Particulars

- (i) The agreements were in writing.
- (ii) Further particulars may be provided after discovery.

c. otherwise does not admit the allegations therein.

62. The AFL admits paragraph 62.

63. The AFL admits paragraph 63.

64. The AFL admits paragraph 64.

65. The AFL admits paragraph 65.

66. The AFL admits paragraph 66.

67. The AFL admits paragraph 67.

68. As to paragraph 68, the AFL:

a. admits that in 1973 the VFL Board of Directors decided to establish a non-drinking area at each ground where matches of the AFL Competition were held and for the Clubs to individually arrange for discussions of provision of a suitable area at each ground;

Particulars

Minutes of Meeting of VFL Board of Directors dated 7 February 1973.

b. says further that pursuant to agreements with the AFL, ground managers agreed to ensure that nominated non-drinking areas were maintained free of alcohol consumption during the conduct of matches in the AFL Competition;

Particulars

(i) The agreements were in writing.

(ii) Further particulars may be provided after discovery.

c. otherwise does not admit the allegations therein.

69. The AFL admits paragraph 69.

70. As to paragraph 70, the AFL:

- a. says that from in or around 1988, ground managers were required to ensure sufficient security measures were in place to ensure safety;
- b. the responsibility for such security was with the ground manager, and not the AFL;
- c. otherwise denies the allegations therein.

Terms and conditions of ticket holders

71. As to paragraph 71, the AFL:

- a. admits that, during the Relevant Period, the terms and conditions of entry by spectators were determined, though not exclusively, by the AFL;
- b. says that, during the Relevant Period, certain terms and conditions of entry, including in relation to certain sections of the grounds, were determined by ground managers and the Clubs;
- c. says that, during the Relevant Period, ground managers reserved the right to refuse entry to any person;
- d. says further that the AFL had no ability to enforce compliance with the terms and conditions of entry, no matter by whom any particular term or condition was set;
- e. otherwise does not admit the allegations therein.

Ownership of Marvel Stadium

72. As to paragraph 72, the AFL:

- a. admits that, at all times from 17 November 2016, it has been the registered proprietor of the land and dwellings known as Marvel Stadium;
- b. otherwise does not admit the allegations therein.

Branding and insignia

73. As to paragraph 73, the AFL:

- a. admits that, in or around 1971, the VFL Board of Directors resolved to establish a VFL Properties Division;
- b. otherwise does not admit the allegations therein.

74. As to paragraph 74, the AFL:

- a. admits that from:
 - i. around 1975 to 23 January 1990, the VFL; and
 - ii. 24 January 1990 to the end of the Relevant Period, the AFL—
earned income from the licensing of VFL or AFL (as applicable) insignia.
- b. says further that the income was required to be applied consistently with the terms of the AFL's Memorandum of Association and Constitution as amended from time to time;
- c. otherwise does not admit the allegations therein.

Television and radio broadcasting

75. As to paragraph 75, the AFL:

- a. admits that from:
 - i. around 1971 to 23 January 1990, the VFL; and
 - ii. 24 January 1990 to the end of the Relevant Period, the AFL—
entered into contracts or arrangements with television and radio broadcasting stations from time to time in relation to the telecast and radio broadcasting of AFL Competition matches;

- b. says further than any income derived from such contracts or arrangements was required to be applied consistently with the terms of the AFL's Memorandum of Association and Constitution as amended from time to time;
- c. otherwise does not admit the allegations therein.

Corporate sponsorships

76. As to paragraph 76, the AFL:

- a. admits that from:
 - i. at least 1981 to 23 January 1990, the VFL; and
 - ii. 24 January 1990 to the end of the Relevant Period, the AFL—
earned income from corporate sponsorship of the AFL Competition;
- b. says further than any income derived from such corporate sponsorship was required to be applied consistently with the terms of the AFL's Memorandum of Association and Constitution as amended from time to time;
- c. otherwise does not admit the allegations therein.

Publications

77. As to paragraph 77, the AFL:

- a. admits that from:
 - i. at least 1975 to 23 January 1990, the VFL; and
 - ii. 24 January 1990 to the end of the Relevant Period, the AFL—
earned income from the sale of AFL publications;
- b. says further than any income derived from the sale of AFL publications was required to be applied consistently with the terms of the AFL's Memorandum of Association and Constitution as amended from time to time;
- c. otherwise does not admit the allegations therein.

C. NEGLIGENCE

Duty of care

78. As to paragraph 78, the AFL:

- a. admits that there was some risk that player group members would experience racist abuse of one kind or another from other players but says further that:
 - i. the risks of a player group member experiencing racist abuse arose from broader social conditions and prevailing attitudes of the relevant time;
 - ii. the risk of a player group member experiencing racist abuse was not limited to circumstances involving participation in matches within the AFL Competition;
 - iii. that risk of racist abuse occurring in the course of matches within the AFL Competition was comparable to the risk arising in other fields of endeavour and areas of life;
 - iv. within the context of the whole of the AFL Competition, the risk of racist abuse was, for much of the Relevant Period, not so substantial so as to come within s 48(1)(b) of the *Wrongs Act 1958* (Vic);

Particulars

- (i) The frequency of racist abuse throughout or for much of the Relevant Period was not so substantial so as to come within s 48(1)(b) of the *Wrongs Act 1958* (Vic) having regard to the number of player group members over time and the number of matches played across the competition.
- (ii) Further particulars may be provided after discovery.

- b. otherwise denies the allegations therein.

79. The AFL denies paragraph 79.

80. As to paragraph 80, the AFL:

- a. admits that there was some risk that player group members would experience physical and/or verbal abuse that was racist, from spectators whilst participating in the AFL Competition, but says further that:
 - i. the risks of a player group member experiencing physical and/or verbal abuse that was racist arose from broader social conditions and prevailing attitudes of the relevant time;
 - ii. that risk was not appreciably higher than in other comparable fields of endeavour or areas of life;
 - iii. within the context of the whole of the competition, the risk of racist abuse was, for much of the Relevant Period, not so substantial so as to come within s 48(1)(b) of the *Wrongs Act 1958* (Vic).

Particulars

(i) The frequency of racist abuse throughout or for much of the Relevant Period was not so substantial so as to come within s 48(1)(b) of the *Wrongs Act 1958* (Vic) having regard to the number of player group members over time and the number of matches played across the competition.

(ii) Further particulars may be provided after discovery.

- b. otherwise denies the allegations therein.

81. As to paragraph 81, the AFL:

- a. says that for some or all of the Relevant Period, the risk that a player group member might suffer injury in the form of physical injury, psychological injury and/or psychiatric injury by reason of the risks the subject of paragraphs 78 to 80, was, for much of the Relevant Period, not so substantial so as to come within s 48(1)(b) of the *Wrongs Act 1958* (Vic);

Particulars

Particulars of the periods during which the risk of harm came within s 48(1)(b) of the *Wrongs Act 1958* (Vic), if any, will be provided after expert evidence.

- b. says further that:
 - i. the probability of the risks the subject of paragraphs 78 to 80 causing injury if the alleged precautions were not taken was unknown and could not have been reasonably known to it having regard to the prevailing medical knowledge concerning the lack of relationship between racial abuse and psychological and/or psychiatric injury during some or all of the Relevant Period;

Particulars

Particulars of the period during which the risk of injury was foreseeable and not insignificant, if any, will be provided after expert evidence.

- ii. the likely seriousness of any personal injury that is allegedly caused by the materialisation of any of the risks in paragraphs 78 to 80, was unknown and could not have been reasonably known to it having regard to the prevailing medical knowledge concerning the lack of relationship between racial abuse and psychological and/or psychiatric injury throughout some or all of the Relevant Period;

Particulars

Particulars of the period during which the risk of injury was foreseeable and not insignificant, if any, will be provided after expert evidence.

- c. otherwise denies the allegations therein.

Vulnerability and reliance

82. As to paragraph 82, the AFL:

- a. as to sub-paragraph 82(a):
 - i. refers to and repeats paragraphs 78 to 81 above;
- b. as to sub-paragraph 82(b):
 - i. to the extent that a player group member was reliant on another party to provide a place which was safe from racial abuse in which to play

Australian Football matches as part of the AFL Competition, that other party was not the AFL;

- ii. refers to and repeats sub-paragraph 13(d) above;
- c. says further that even a safe space, including with all of the precautions alleged at paragraph 90 of the ASOC (the reasonableness of which is denied), will still carry some risk of racial abuse;
- d. otherwise denies the allegations therein.

VFL/AFL knowledge

83. As to paragraph 83, the AFL:

- a. says that the paragraph is vague and embarrassing and not capable of being pleaded to in that it:
 - i. fails to identify, other than Harry Beitzel, any person whose knowledge of the matters alleged is imputed to be the AFL's knowledge;
 - ii. fails to identify, in respect of Mr Beitzel, how his knowledge is alleged to be imputed to be the AFL's knowledge at all material times in the Relevant Period;
 - iii. alleges actual or constructive knowledge over a period of more than 45 years (May 1980 to 9 October 2025) without proper particulars;

otherwise

- b. refers to and repeats paragraphs 78 to 82 above;
- c. denies the allegations therein.

84. As to paragraph 84, the AFL:

- a. says that the paragraph is vague and embarrassing in that it fails to identify any person whose knowledge of the matters alleged is imputed to be the AFL's knowledge, and how that knowledge is alleged to be imputed; otherwise

- b. as to sub-paragraph 84(a):
 - i. refers to and repeats sub-paragraph 82(c) above;
 - ii. otherwise denies the allegations therein;
- c. as to sub-paragraph 84(b):
 - i. denies the allegations therein.

VFL/AFL control

85. As to paragraph 85, the AFL:
- a. refers to and repeats paragraphs 13 to 77 above;
 - b. otherwise denies the allegations therein.

Alleged Akin-to-Employment Duty of Care

86. As to paragraph 86, the AFL:
- a. refers to and repeats paragraphs 78 to 85 above;
 - b. says that the AFL did not, at any time, employ player group members during their time as players;
 - c. says that devising, putting in place and maintaining any relevant “safe system of work” was not the responsibility of the AFL;
 - d. otherwise denies the allegations therein.

Alleged Principal Duty of Care

87. As to paragraph 87, the AFL:
- a. refers to and repeats paragraphs 78 to 85 and sub-paragraphs 86(b) to (c) above;
 - b. otherwise denies the allegations therein.

Alleged General Duty of Care

88. As to paragraph 88, the AFL:
- a. refers to and repeats paragraphs 78 to 85 above;
 - b. otherwise denies the allegations therein.

VFL/AFL standard of care

89. As to paragraph 89, the AFL:
- a. refers to and repeats paragraph 81 above;
 - b. otherwise denies the allegations therein.
90. As to paragraph 90, the AFL:
- a. says that the paragraph is vague and lacks proper particulars of the standard of care alleged; otherwise
 - b. refers to and repeats paragraphs 33 to 71 and 81 to 82 above;
 - c. says further that the taking of any of the precautions alleged depended on the AFL knowing of, and third parties drawing to the AFL's attention, any instance or alleged instance of racist abuse;
 - d. otherwise denies the allegations therein.

Alleged breaches of Abused Players' Akin-to-Employment Duty of Care, Abused Players' Principal Duty of Care and Abused Players' General Duty of Care

91. As to paragraph 91, the AFL:
- a. says that the paragraph is vague and lacks proper particulars of the standard of care alleged; otherwise
 - b. refers to and repeats paragraph 90 above;
 - c. denies the allegations therein.

92. As to paragraph 92, the AFL:

- a. says that the paragraph is vague and lacks proper particulars of the standard of care alleged; otherwise
- b. refers to and repeats paragraph 90 above;
- c. denies the allegations therein.

93. The AFL denies paragraph 93.

Causation

Plaintiffs

94. As to paragraph 94, the AFL:

- a. admits that the First Plaintiff was from time to time exposed to and subjected to physical and verbal racist abuse from players and spectators whilst playing in matches in the AFL Competition;
- b. otherwise denies the allegations therein.

95. As to paragraph 95, the AFL:

- a. admits that the Second Plaintiff was from time to time exposed to and subjected to physical and verbal racist abuse from players and spectators whilst playing in matches in the AFL Competition;
- b. otherwise denies the allegations therein.

Group members

96. As to paragraph 96, the AFL:

- a. admits that the player group members identified in the particulars subjoined thereto by reference to Schedule C of the ASOC were from time to time exposed to and subjected to physical and verbal racist abuse from players and spectators whilst playing in football matches in the AFL Competition;

- b. says that the paragraph does not particularise the claims of other player group members not so identified;
- c. otherwise denies the allegations therein.

Loss and damage

97. The AFL denies paragraph 97.

D. NEGLIGENCE—FAMILY GROUP MEMBERS

Duty

Risk of harm

98. As to paragraph 98, the AFL:

- a. says that the risk of the First Plaintiff or a family group member being exposed to distressing circumstances arising from their exposure to physical and/or verbal abuse that was racist, from players or spectators whilst participating in the AFL Competition, causing psychological injury and/or psychiatric injury, was:
 - i. not foreseeable; and/or
 - ii. not so substantial so as to come,

within the meaning of s 48(1)(a) and (b) of the *Wrongs Act 1958* (Vic);
- b. refers to and repeats sub-paragraph 81(b) above;
- c. otherwise denies the allegations therein.

Vulnerability and reliance

99. As to paragraph 99, the AFL:

- a. refers to and repeats paragraph 98 above;
- b. otherwise denies the allegations therein.

100. As to paragraph 100, the AFL:

- a. refers to and repeats paragraphs 82 and 99 above;
- b. otherwise denies the allegations therein.

VFL/AFL knowledge

101. As to paragraph 101, the AFL:

- a. refers to and repeats paragraphs 83 to 84 above;
- b. otherwise denies the allegations therein.

102. As to paragraph 102, the AFL:

- a. as to sub-paragraph 102(a):
 - i. admits that the First Plaintiff and the family group members had a deep emotional and interpersonal attachment to the respective player group members;
 - ii. otherwise denies the allegations therein;
- b. as to sub-paragraph 102(b):
 - i. refers to and repeats paragraph 98 above;
 - ii. otherwise denies the allegations therein;
- c. as to sub-paragraph 102(c):
 - i. refers to and repeats paragraphs 99 to 100 above;
 - ii. otherwise denies the allegations therein.

VFL/AFL control

103. As to paragraph 103, the AFL:
- a. refers to and repeats paragraph 85;
 - b. otherwise denies the allegations therein.

Duty of care

104. As to paragraph 104, the AFL:
- a. refers to and repeats paragraphs 98 to 103 above;
 - b. otherwise denies the allegations therein.

VFL/AFL standard of care

105. As to paragraph 105, the AFL:
- a. refers to and repeats paragraph 98 above;
 - b. otherwise denies the allegations therein.
106. As to paragraph 106, the AFL:
- a. refers to paragraphs 85, 90 and 105 above;
 - b. otherwise denies the allegations therein.

Alleged breach of Family Duty of Care

107. As to paragraph 107, the AFL:
- a. refers to and repeats paragraph 90 above;
 - b. otherwise denies the allegations therein.
108. The AFL denies paragraph 108.

Causation

109. The AFL denies paragraph 109.

110. The AFL denies paragraph 110.

E. COMMON QUESTIONS

111. The AFL denies that the questions in paragraphs 111-129 are common questions.

F. OTHER DEFENCES

Contractual limitation of liability

112. Each of the First and Second Plaintiffs and some of the player group members who played in and after 1985 entered into written agreements with the AFL, pursuant to which they released the AFL from any liability whatsoever to them for any loss, damage or injury of whatsoever kind arising directly or indirectly from any act, neglect or default (whether negligent or otherwise) on the part of the AFL.

Particulars

(i) The agreements were known as “Form 1” agreements. One such agreement was between the Second Plaintiff and the AFL signed by the former on 1 March 1994.

(ii) Further particulars may be provided after discovery.

113. By reason of the matters in paragraph 112, if contrary to paragraph 93 above, the AFL breached any of the alleged duties, the AFL is not liable for the losses alleged.

Requirement of significant injury

114. The claims of the First Plaintiff, Second Plaintiff and group members are claims for personal injury damages and are therefore affected by Part VB of the *Wrongs Act 1958* (Vic).

115. Further, the claims of the First Plaintiff, Second Plaintiff and group members are or include claims for damages for non-economic loss, and to that extent, are:

a. claims to which the provisions in Part VBA of the *Wrongs Act 1958* (Vic) apply;

- b. not maintainable insofar as there is no significant injury.

Limitation periods

- 116. Further, the claims of the First and Second Plaintiffs are statute-barred under ss 27D or 5(1AA) of the *Limitation of Actions Act 1958* (Vic).
- 117. Further, the claims of group members will be subject to, and the AFL relies upon, the limitation periods prescribed by state and territory legislation including:
 - a. *Limitation of Actions Act 1958* (Vic);
 - b. *Limitation of Actions Act 1969* (NSW);
 - c. *Limitation of Actions Act 1974* (Qld);
 - d. *Limitation Act 2005* (WA);
 - e. *Limitation Act 1935* (WA);
 - f. *Limitation Act 1985* (ACT);
 - g. *Limitation Act 1974* (TAS);
 - h. *Limitation of Actions Act 1936* (SA);
 - i. *Limitation Act 1981* (NT); and
 - j. *Fatal Accidents Act 1959* (WA).

Dated: 14 November 2025

M P Costello
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