

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

Not Restricted

S ECI 2023 00969

BETWEEN :

JARAD MAXWELL ROOKE

Plaintiff

v

AUSTRALIAN FOOTBALL LEAGUE (ACN 004 155 211)

First Defendant

- and -

GEELONG FOOTBALL CLUB LIMITED (ACN 005 150 818)

Second Defendant

- and -

HUGH SEWARD & ORS (according to the attached Schedule)

First Third Party

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<u>JUDGE:</u>	Keogh J
<u>WHERE HELD:</u>	Melbourne
<u>DATE OF HEARING:</u>	17 November 2025
<u>DATE OF RULING:</u>	2 December 2025
<u>CASE MAY BE CITED AS:</u>	Rooke v Australian Football League (No 2)
<u>MEDIUM NEUTRAL CITATION:</u>	[2025] VSC 748

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PRACTICE AND PROCEDURE — Representative proceeding — Negligence — Alternative claim for breach of duties under the *Occupational Health and Safety Regulations* — Application for summary judgment and strike out of pleadings — *Lindsay-Field v Three Chimneys Farm Pty Ltd* [2010] VSC 436 — *Deal v Father Pius Kodakkathanath* (2016) 258 CLR 281 — No cause of action disclosed by pleadings — Claim struck out with leave to replead.

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APPEARANCES:

Counsel

Solicitors

For the Plaintiff

F Forsyth KC with P Hamilton

Margalit Injury Lawyers

For the First Defendant

B Ihle KC with R Singleton

DLA Piper Australia

For the Second Defendant

M Rush KC with J Elliott

Lander & Rogers

For the First, Third and  
Eleventh Third Parties

D Maddocks

Perry Maddocks Trollope  
Lawyers

For the Fourth and Fifth  
Third Parties

R Heath KC with B Petrie and L  
Dawson

Moray & Agnew



HIS HONOUR:

- 1 In this group proceeding, the plaintiff, Jarad Rooke, makes a claim for damages for himself and group members for brain injuries he alleges were caused by the negligent failure of the first defendant, the Australian Football League ('AFL') and the second defendant, Geelong Football Club Limited ('Geelong') to manage concussion injuries sustained in the course of football matches and training. Rooke makes an alternative claim in the proceeding alleging breach of duties owed by the defendants under the *Occupational Health and Safety Regulations* ('statutory duty claim').<sup>1</sup> The defendants have applied for this claim to be summarily dismissed on the ground that it has no real prospect of success, or alternatively struck out on the ground that as currently pleaded no cause of action is disclosed.
- 2 For the reasons that follow, I will strike out the current statutory duty claim pleadings and give Rooke leave to replead.

### **Summary judgment and strike out**

- 3 A court may grant summary judgment in a proceeding if satisfied that a claim or part of a claim has no real, as opposed to fanciful prospect of success.<sup>2</sup> There is discretion to order that a claim proceed to trial despite there being no real prospect of success if it is in the interest of justice to do so, or because the nature of the dispute demands a full hearing on the merits.<sup>3</sup> The power to order summary dismissal should be exercised with caution and only if it is clear there is no real question to be tried.<sup>4</sup>
- 4 A court may strike out a pleading that does not disclose a cause of action or defence; is scandalous, frivolous or vexatious; may prejudice, embarrass or delay the fair trial of the proceeding; or is otherwise an abuse of process.<sup>5</sup> I adopt without repeating the principles to be applied on a strikeout application summarised by J Dixon J in

<sup>1</sup> *Occupational Health and Safety (Manual Handling) Regulations 1999* (Vic) ('1999 Regulations'); *Occupational Health and Safety Regulations 2007* (Vic) ('2007 Regulations'); *Occupational Health and Safety Regulations 2017* (Vic).

<sup>2</sup> *Civil Procedure Act 2010* (Vic) ss 62-63 ('CPA'); *Lysaght Building Solutions Pty Ltd (t/as Highline Commercial Construction) v Blanalko Pty Ltd* (2013) 42 VR 27, 39 [29] (Warren CJ and Nettle JA) ('*Lysaght*').

<sup>3</sup> CPA (n 2) s 64; *Sternfein v Bloom (as executors of estate of Brumer (decd))* [2025] VSCA 275 [6] (Richards and Kenny JJA and J Forrest AJA).

<sup>4</sup> *Lysaght* (n 2) 40 [35] (Warren CJ and Nettle JA).

<sup>5</sup> *Supreme Court (General Civil Procedure) Rules 2025* (Vic) r 23.02.



**OHS Regulations**

5 Rooke relies on statutory duties that he says are imposed on the defendants in the period 1 July 1999 to 14 March 2023 ('OHS period') by the following regulations:

- (a) *Occupational Health and Safety (Manual Handling) Regulations 1999* (Vic) ('1999 Regulations');
- (b) *Occupational Health and Safety Regulations 2007* (Vic) ('2007 Regulations'); and
- (c) *Occupational Health and Safety Regulations 2017* (Vic) ('2017 Regulations'), ('OHS Regulations').

There is no material difference between the OHS Regulations in relation to this application. For the purposes of this ruling I will focus on the 2007 Regulations.

6 The 2007 Regulations contain the following relevant definitions:<sup>7</sup>

*hazardous manual handling* means –

- (a) manual handling having any of the following characteristics –
  - (i) repetitive or sustained application of force;
  - (ii) repetitive or sustained awkward posture;
  - (iii) repetitive or sustained movement;
  - (iv) application of high force being an activity involving a single or repetitive use of force that it would be reasonable to expect that a person in the workforce may have difficulty undertaking;
  - ...
  - (v) exposure to sustained vibration;
- (b) manual handling of live persons or animals[.]

*manual handling* means any activity requiring the use of force exerted by a person to lift, lower, push, pull, carry or otherwise move, hold or restrain any

<sup>6</sup> [2013] VSC 316, 9–12 [25].

<sup>7</sup> 2007 Regulations (n 1) reg 1.1.5.



object[.]

*musculoskeletal disorder* means an injury, illness or disease that arises in whole or in part from manual handling in the workplace, whether occurring suddenly or over a prolonged period of time, but does not include an injury, illness or disease that is caused by crushing, entrapment or cut resulting primarily from the mechanical operations of plant[.]

*object*, in Part 3.1 (Manual Handling) and the definition of *manual handling*, includes an inanimate or animate object, plant or any substance or material contained by an object[.]

7 Manual handling is dealt with by ch 3 pt 3.1 of the 2007 Regulations. Duties are imposed on employers in the categories of hazard identification, control of risk and review of risk control measures.

8 In relation to hazard identification, sub-reg 3.1.1(1) of the 2007 Regulations provides:

An employer must, so far as is reasonably practicable, identify any task undertaken, or to be undertaken, by an employee involving hazardous manual handling.

9 In relation to control of risk, reg 3.1.2 of the 2007 Regulations reads:

(1) An employer must ensure that the risk of a musculoskeletal disorder associated with a hazardous manual handling task affecting an employee is eliminated so far as is reasonably practicable.

(2) If it is not reasonably practicable to eliminate the risk of a musculoskeletal disorder associated with a hazardous manual handling task affecting an employee, an employer must reduce that risk so far as is reasonably practicable by –

(a) altering –

(i) the workplace layout; or

(ii) the workplace environment, including heat, cold and vibration, where the task involving manual handling is undertaken; or

(iii) the systems of work used to undertake the task; or

(b) changing the objects used in the task involving manual handling; or

(c) using mechanical aids; or

(d) any combination of paragraphs (a) to (c).

(3) If it is not reasonably practicable for an employer to reduce the risk of



a musculoskeletal disorder associated with a hazardous manual handling task in accordance with subregulation (2), the employer may control that risk by the use of information, instruction or training.

- (4) Without affecting the generality of subregulations (1), (2) and (3), an employer, when determining any measure to control any risk of musculoskeletal disorder, must address the following factors –
- (a) postures; and
  - (b) movements; and
  - (c) forces; and
  - (d) duration and frequency of the task; and
  - (e) environmental conditions including heat, cold and vibration that act directly on a person undertaking the task.

10 Sub-regulation 3.1.3(1) imposes an obligation on employers to review and, if necessary revise risk control measures in the following circumstances:

- (a) before any alteration is made to objects used in a workplace or to systems of work that include a task involving hazardous manual handling, including a change in the place where that task is undertaken; or
- (b) before an object is used for another purpose than that for which it was designed if that other purpose may result in an employee carrying out hazardous manual handling; or
- (c) if new or additional information about hazardous manual handling being associated with a task becomes available to the employer; or
- (d) if an occurrence of a musculoskeletal disorder in a workplace is reported by or on behalf of an employee; or
- (e) after any incident occurs to which Part 5 of the [*Occupational Health and Safety Act 2004* (Vic)] applies that involves hazardous manual handling; or
- (f) if, for any other reason, the risk control measures do not adequately control the risks; or
- (g) after receiving a request from a health and safety representative.

### **Authorities**

11 In *Lindsay-Field v Three Chimneys Farm Pty Ltd* ('*Lindsay-Field*'),<sup>8</sup> J Forrest J determined a claim for damages for injuries suffered by the plaintiff, who was engaged in the task

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<sup>8</sup> [2010] VSC 436.



of removing the afterbirth from a mare that had just foaled, when it kicked her in the head. J Forrest J, having found for the plaintiff on the negligence claim, proceeded to consider a claim for breach of the 1999 Regulations.

- 12 His Honour observed that when the plaintiff was kicked, she was not restraining or applying any physical force to the mare, was not holding the mare, and was not engaged in any lifting, pushing or pulling. His Honour said that had she not been injured, the plaintiff was intending to tie up whatever was left of the afterbirth. His Honour said:

This description does not, in my view, fall within the definition of ‘manual handling’. Whilst Mr McLean said that some force was required in relation to the tying off of the afterbirth, I am dubious of this description given the subsequent evidence of Mr Kerry and Mr Byers as to the state of the afterbirth given that the amniotic sac had been left in the paddock. Whilst Mrs Lindsay-Field would have been required to hold the afterbirth to tie it, I am not satisfied that any true application of force was likely to be involved in this exercise; it therefore does not fall within the definition of manual handling.<sup>9</sup>

- 13 In relation to the application of the 1999 Regulations more generally, J Forrest J said:

In any event, I do not accept that this activity is of the type intended to be covered by the Regulations. The objective of the Regulations, I think, is directed towards activities (and, particularly repetitive actions) which require the application of force in the course of the particular activity (be it lifting, pushing, pulling or holding) and thus result in a risk of injury. It is that type of injury which the Regulations are designed to prevent. That is not the case here. The risk of injury was not occasioned by the stresses or forces involved in the tying up of the afterbirth, but rather by the position the employee had to take up in relation to the rear of the mare; it was not the handling of a particular object (i.e. the afterbirth) that generated the risk of injury. The circumstances surrounding the injury, therefore, in my view, fall outside the purview of the Regulations and its objects namely –

to reduce the number and severity of musculoskeletal disorders associated with tasks involving manual handling.<sup>10</sup>

- 14 The plaintiff in *Deal v Father Pius Kodakkathanath* (*Deal*)<sup>11</sup> claimed damages for a knee injury suffered in the course of her employment as a primary school teacher when she fell from a stepladder while removing papier-mâché displays from a classroom

<sup>9</sup> Ibid 26 [103].

<sup>10</sup> Ibid 26-7 [104]; 1999 Regulations (n 1) reg 1.

<sup>11</sup> (2016) 258 CLR 281 (*Deal*).





pinboard. A question on appeal was whether a breach of statutory duty claim based on the 2007 Regulations should have been left with the jury. The plurality noted that it was not in dispute that the plaintiff's injury was a musculoskeletal disorder that arose, in whole or in part, from manual handling in the workplace, and that the task of removing the displays from the pinboard with use of the stepladder was a hazardous manual handling task. One issue that remained to be determined was 'whether the risk of a musculoskeletal disorder of the kind suffered by the appellant can properly be conceived of as a risk "associated with" the hazardous manual handling task comprised of removing the displays from the pin-board with the use of the step ladder'.<sup>12</sup> In relation to that issue, the plurality said:

In its natural and ordinary sense, the phrase 'associated with' may mean either combined in terms of circumstances or combined in terms of classification. If it is used in reg 3.1.2 in the former sense of combined in terms of circumstances, it would imply that the risk of an employee suffering a musculoskeletal disorder while carrying out a hazardous manual handling task could fall within reg 3.1.2 whatever the cause of the musculoskeletal disorder. By contrast, if it is used in the more limited sense of combined in terms of classification, it would imply that a risk of musculoskeletal disorder cannot fall within reg 3.1.2 unless the risk is caused by one or more of the characteristics which define a manual handling task as a hazardous manual handling task, namely, repetitive or sustained application of force, repetitive or sustained awkward posture, repetitive or sustained movement, application of high force, exposure to sustained vibration, manual handling of live persons or animals, or manual handling of unstable or unbalanced loads or loads that are difficult to grasp or hold. There is therefore a constructional choice to be made between those two possible meanings.<sup>13</sup>

- 15 The plurality approved the observations of J Forrest J in *Lindsay-Field* set out in para [13] above. Addressing the constructional choice, the plurality then said:

A number of considerations point in favour of the conclusion that 'associated with' in reg 3.1.2 is used in the sense of combined in terms of classification rather than combined in terms of circumstances, with the result that the risks of musculoskeletal disorder to which reg 3.1.2 is directed are confined to risks of musculoskeletal disorder that arise from, and thus are caused by, something which is intrinsic to the hazardous manual handling task.<sup>14</sup>

The plurality concluded:

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<sup>12</sup> Ibid 294 [35] (French CJ, Kiefel, Bell and Nettle JJ).  
<sup>13</sup> Ibid 295-6 [39] (citations omitted).  
<sup>14</sup> Ibid 296 [41] (citations omitted).





[T]he natural and ordinary implication of the text of reg 3.1.2 is that it is confined to risks which arise from or, in other words, are caused by one or more of those hazardous manual handling task force factors.<sup>15</sup>

16 Likewise, Gageler J concluded:

The reference in reg 3.1.2 to ‘the risk of a musculoskeletal disorder associated with a hazardous manual handling task’ needs to be read bearing in mind that a musculoskeletal disorder is an injury, illness or disease that is caused by manual handling, albeit that manual handling need not be the sole cause. The words ‘associated with’ do not introduce some further or different causal connection. What the words signify is that the particular risk of a musculoskeletal disorder concerned is the risk of an injury, illness or disease caused, in whole or in part, by manual handling meeting the description of hazardous manual handling.<sup>16</sup>

### **The pleaded statutory duty claim**

17 In the second amended statement of claim (‘2ASOC’) Rooke alleges:

During the OHS period, when sustaining head knocks during matches and training, as a result of, inter alia:

- (a) body contact;
- (b) tackles;
- (c) collisions between or among players,

the AFL players engaged in hazardous manual handling ... within the meaning of the OHS Regulations.

### **PARTICULARS**

- (i) Regulation 13 of the 1999 Regulations;
- (ii) Regulation 1.1.5 of the 2007 Regulations; and
- (iii) Regulation 5 of the 2017 Regulations, as it was:
  - 1. repetitive application of force;
  - 2. repetitive awkward posture;
  - 3. repetitive movement;
  - 4. application of high force; and/or
  - 5. manual handling of live persons.
- (iv) The players were required as part of their work to use force to move or hold the ball in the manner set out in para (iii) (1)-(4)

<sup>15</sup> Ibid 299 [47] (citations omitted).

<sup>16</sup> Ibid 306 [72].



above and to push, hold or restrain live persons. The players were also required to do so in a repeated way during matches and training, and repeated match after match.

- 18 Rooke alleges the defendants owed AFL players the duties contained in regs 3.1.1, 3.1.2, 3.1.3 of the 2007 Regulations, and the equivalent duties in the 1999 Regulations and 2017 Regulations.
- 19 Rooke does not expressly plead the injuries allegedly suffered by players as a result of negligence or breach of statutory duty by the defendants. By definition, group members must have suffered a permanent brain injury caused by concussion as a result of head knocks sustained in the course of AFL matches or training. In the negligence claim, Rooke pleads the risk of harm as follows:

During the period, the AFL and further or alternatively the Geelong Football Club in so far as it relates to its registered Club players, knew, or it was reasonably foreseeable to a person in the position of the AFL and further or alternatively the Geelong Football Club, that, while participating in the AFL Competition:

- (a) a player was at risk of sustaining one or more head knocks during training or matches as a result of, inter alia:
  - i body contact;
  - ii tackles;
  - iii collisions between or among players; and
  - iv heavy landings from high marks;
- (b) head knocks to a player may cause concussion;
- (c) a player returning to matches or training while suffering the effects of concussions caused, or materially increased the risk of, a player sustaining personal injury by way of a:
  - i permanent concussion-related injury (PCRI); or
  - ii aggravation, acceleration or exacerbation of a PCRI; and
- (d) a player who was exposed to multiple concussions in their AFL career, in particular in the circumstances set out in sub-paragraph (c) immediately above, was at risk of:
  - i suffering a PCRI; or
  - ii aggravating, accelerating or exacerbating a PCRI.

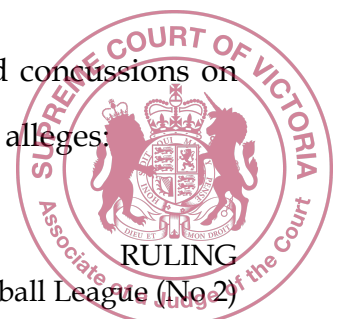


Rooke pleads PCRI and psychiatric injury as the injuries he has suffered as a result of the defendants' alleged breaches. I proceed on the basis that it is alleged that the defendants' breaches caused group members to suffer permanent brain injury described as a PCRI or aggravation, acceleration or exacerbation of a PCRI.

20 Rooke alleges the defendants breached the statutory duties by failing to take the following precautions against the risk of harm:

- (a) having a rigorous system for the identification of symptoms of concussion by way of monitoring, or requiring responsible delegates to monitor, matches and training for symptoms of concussion;
- (b) where symptoms of concussion were suspected or identified, having the player immediately withdrawn from participation in matches or training, as the case may be;
- (c) where symptoms of concussion were suspected or identified, having a mandatory period of no training or playing in matches of a minimum of 12 days;
- (d) after the mandatory period of no training or playing in matches, requiring the player to be assessed by a medical officer as being fit before resuming play or training;
- (e) once being assessed as fit to resume matches or training, graduating the player to return to training while observing for any subtle changes to the player caused by the concussion;
- (f) if no subtle changes were identified while the player gradually returned to training, then only permitting the player to return to matches while monitoring the player for any subtle changes caused by the concussion;
- (g) if a player had suffered one or more concussions in matches or training, assessing whether the player was ever capable of returning safely to matches or training;
- (h) assessing the risk of head knocks and concussions to AFL players while playing in matches and training;
- (i) studying and monitoring the effect of head knocks and concussions on AFL players in matches and training, including over time; and
- (j) advising, warning and educating the AFL players on the risks of head knocks, signs and symptoms of concussions and the concussion risk of harm. ('the reasonable precautions').

21 In Rooke's own claim, he alleges that he suffered head knocks and concussions on about 36 occasions during his AFL playing career with Geelong. He alleges:



The head knocks were suffered as a result of repetitive or sustained application of force or applications of high force to move or hold the ball and use of force to push, move, hold or restrain live persons.

Rooke's pleadings reveals no detail of how any of the alleged head knocks or concussions occurred, or of the tasks Rooke was engaged in at the time.

- 22 Rooke alleges that on seven occasions after he suffered head knocks and concussions he was exposed to further head knocks and concussions during matches and training when he had not fully recovered from symptoms of concussion. Rooke does not identify any particular task undertaken on any of those occasions that was associated with a risk of head knocks or with the eventuation of that risk.
- 23 Rooke alleges the defendants breached statutory duties owed to him under the 1999 Regulations and 2007 Regulations, and that as a result he suffered a PCRI.

### **Submissions**

#### **Defendants**

- 24 Rooke's claim is premised on an acceptance that head knock injuries occur. In that context, Rooke's case is that steps were required to be taken by the defendants to mitigate against the risk of further injury (eg an acquired brain injury) arising from a player participating in training or matches after having sustained a head knock. That case cannot be reconciled with the nature of the obligations imposed under the OHS Regulations. As the High Court of Australia said in *Deal*, the risks of musculoskeletal disorder must arise from, and thus be caused by, 'something which is intrinsic to the hazardous manual handling task'.<sup>17</sup> The management and assessment of a player following a head knock is not concerned with a hazardous manual handling task. It is concerned with addressing the consequences of an injury after it has already occurred, and the risk of further injury if a player was to return to play.
- 25 Rooke's claim finds no support in the text or purpose of the OHS Regulations in relation to hazardous manual handling. Those Regulations are directed to a consideration of how manual handling tasks that may cause musculoskeletal injury

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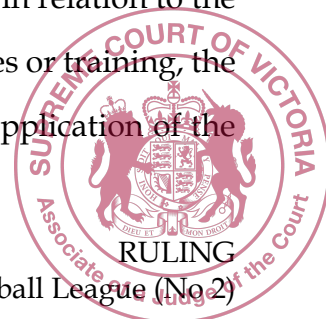
<sup>17</sup> *Deal* (n 11) 296 [41] (French CJ, Kiefel, Bell and Nettle JJ).



are to be managed in a way that eliminates or reduces the risk of injury occurring when an employee performs the task. The OHS Regulations relating to manual handling are not directed to managing a risk of harm arising from a previous or existing injury, and they impose no duty on an employer to identify a hazardous manual handling task that may cause a musculoskeletal disorder because of previous or existing injury.

### **Rooke**

- 26 The statutory duty claim is based on the following.
- 27 First, that AFL players were required to engage in hazardous manual handling tasks involving the use of force to move or hold the ball, or to push, hold or restrain live persons.
- 28 Second, there was a risk of the players suffering a musculoskeletal disorder, that is, a head knock caused by engaging in the identified hazardous manual handling task.
- 29 Third, the defendants' duty to reduce that risk extends to reducing the consequences of receiving a head knock and risks associated with exposure to repeated head knocks. The OHS Regulations require that the risk associated with a hazardous manual handling task is controlled. The OHS Regulations do not limit the obligation to control the risk to making changes to the hazardous manual handling task. The obligation to control the risk extends to precautions directed to reducing the consequences of a musculoskeletal injury.
- 30 Fourth, players who were returned to matches or training after having sustained a head knock were exposed to repetitive injury associated with the relevant hazardous manual handling tasks.
- 31 By confining the enquiry to the time when a hazardous manual handling task is performed and not considering precautions to control the risk taken in relation to the management of the ongoing injury or the return of a player to matches or training, the defendants take too narrow an approach to the interpretation and application of the



OHS Regulations.

Analysis

- 32 Rooke submitted the statutory duty claim was open in two ways. First, that the defendants owed duties under the OHS Regulations to manage the aftermath of head knocks sustained by players. Second, the OHS Regulations required the defendants to eliminate, reduce or control the risk to players who had sustained a head knock, and had not fully recovered, from sustaining further head knocks upon returning to matches or training.
- 33 Rooke's submission that duties imposed by the OHS Regulations extend to taking precautions, such as those pleaded in this case, to reduce the consequences of a musculoskeletal injury is inconsistent with the observations by J Forrest J in *Lindsay-Field* that were subsequently approved by the plurality in *Deal*. Consistent with those observations, the purpose of the OHS Regulations is to impose a duty on employers to take measures to eliminate, reduce or control the risk of injury occasioned by the stresses or forces involved in a manual handling task. The OHS Regulations are concerned with the risk to employees arising from or associated with performing manual handling tasks in the work place.
- 34 The exclusive list of measures in sub-reg 3.1.2(2) of the 2007 Regulations that an employer must take are directed to the hazardous manual handling tasks with which the risk of musculoskeletal disorder is associated. The measures contemplated are intended to address the characteristics that make a manual handling task hazardous by altering the way in which the task is performed and the workplace where that occurs.
- 35 The control measures in sub-reg 3.1.2(4) of the 2007 Regulations, that an employer must address are directly and exclusively related to the way in which the task is performed; the duration and frequency of the task; and relevant environmental conditions of the workplace.
- 36 The obligation in sub-reg 3.1.2(3) of the 2007 Regulations, to control the risk by use of



‘information, instruction or training’, is to be understood in the context of the measures specified in sub-regs 3.1.2(2), (4).

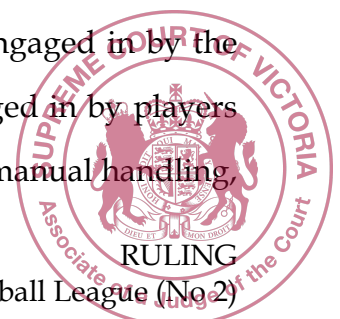
37 A fundamental problem with the way that Rooke articulates the statutory duty claim relates to the reasonable precautions that he alleges should have been taken by the defendants. The precautions relate to the management of players who have sustained head knocks. The precautions are not directed to altering the way in which a task is undertaken or the workplace in which that occurs in order to eliminate, reduce or control the risk. There is nothing in the OHS Regulations to suggest that the duties imposed on employers in relation to musculoskeletal injuries arising from or associated with hazardous manual handling tasks extend to precautions directed to reducing consequences of a musculoskeletal injury after it has occurred, as is pleaded by Rooke.

38 For the above reasons I conclude the statutory duty pleading in the 2ASOC does not disclose a cause of action. The remaining question is whether Rooke should have an opportunity to replead.

39 On the current pleading, the scope of the statutory duty claim is completely uncertain. If an attempt to replead is made the following matters will need to be addressed so that the defendants are given notice of the claim they must meet.

40 The group member definition and Rooke’s negligence claim are based on AFL players having sustained head knocks resulting in concussion. The only limitation is that the head knocks have been sustained in the course of an AFL match or training.

41 A player may sustain a head knock/concussion during an AFL match or at training in a multitude of ways. For example, a player may sustain a head knock in the course of being tackled by an opponent, or when struck from behind by an opponent attempting or spoiling a mark. It is not likely that a head knock sustained in those circumstances occurred as a result of a hazardous manual handling task being engaged in by the injured player. While it is probably the case that some tasks engaged in by players during matches and training will meet the definition of hazardous manual handling,





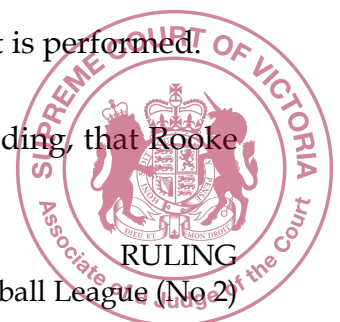
the current pleading is not sufficient to put the defendants on notice of the particular tasks relied on or of the measures or controls that Rooke says should have been implemented to reduce a risk of injury associated with those tasks.

42 Rooke does not allege that every head knock he sustained was associated with engaging in a hazardous manual handling. However, Rooke makes no attempt in the 2ASOC to set out the circumstances in which he sustained each alleged head knock or say which of those head knocks arose from, or were associated with, an identified hazardous manual handling task.

43 In submissions, Rooke relied on the repetitive application of force, awkward posture and movement in the definition of hazardous manual handling task. The definition of musculoskeletal disorder includes an injury, illness or disease that occurs 'over a prolonged period of time'. These features of the definition are directed to a gradual process injury associated with the repeated performance of a task. As I understand it, Rooke's claim is based on the risk of permanent brain damage from exposure to multiple traumatic incidents in which head knocks were sustained. It is not clear how brain injury caused by a series of traumas can be said to arise from manual handling performed over a prolonged period of time.

44 The risk of a head knock may be intrinsic to a hazardous manual handling task such as shepherding or tackling a player. It is possible that the eventuation of that risk more than once within a particular period may result in the player suffering a permanent injury. Conceivably, a case could be made that the OHS Regulations imposed a duty on either or both defendants to respond to that risk. However, for reasons already stated, an alleged failure to respond to a risk of a musculoskeletal disorder will only be actionable under the OHS Regulations if the precautions that Rooke alleges should have been taken are within the scope of measures identified in the OHS Regulations that are directed to the way in which the hazardous manual handling task is performed and the workplace environment where it is performed.

45 It is appropriate, particularly because this is a representative proceeding, that Rooke



have a further opportunity to articulate the breach of statutory duty claim. It may be possible to plead a statutory duty claim that has a real prospect of success. However, there is merit in the defendants' submission that it is difficult to conceive of circumstances in which the negligence claim fails, but the statutory duty claim as it is pleaded succeeds. If this is correct, the statutory duty claim may be wholly irrelevant in practical terms to the outcome of this proceeding. It is a matter for Rooke to consider the merits of attempting to replead a statutory duty claim.

### Conclusion

- 46 The statutory duty pleadings in the 2ASOC will be struck out. Rooke will have leave to replead the statutory duty claim for himself and group members. I will hear from the parties as to the appropriate form of orders.

### CERTIFICATE

I certify that this and the 14 preceding pages are a true copy of the reasons for Ruling of the Honourable Justice Keogh of the Supreme Court of Victoria delivered on 2 December 2025.

DATED this 2<sup>nd</sup> day of December 2025.

AR

Associate



## SCHEDULE OF PARTIES

JARAD MAXWELL ROOKE

Plaintiff

v

AUSTRALIAN FOOTBALL LEAGUE (ACN 004 152 211)

First Defendant

- and -

GEELONG FOOTBALL CLUB (ACN 005 150 818)

Second Defendant

- and -

HUGH SEWARD

First Third Party

- and -

PETER LARKINS

Second Third Party

- and -

ANDREW IRWIN

Third Third Party

- and -

CHRIS BRADSHAW

Fourth Third Party

- and -

GEOFF ALLEN

Fifth Third Party

- and -

DREW SLIMMON

Sixth Third Party

- and -

DAVID LONG

Seventh Third Party

- and -

JAMES MCLAREN

Eighth Third Party

- and -

PETER RYAN

Ninth Third Party



- and -

**GREG LINDQUIST**

Tenth Third Party

- and -

**JEANNE MCGIVERN**

Eleventh Third Party

- and -

**KENDALL BROOKS**

Twelfth Third Party

