



IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMERCIAL COURT
GROUP PROCEEDINGS LIST

Case: S ECI 2024 07057
No. **S ECI 2024 07057**
Filed on: 30/03/2026 04:23 PM

B E T W E E N

Jeremy Bergman

Plaintiff

- and -

Sportsbet Pty Ltd (ACN 088 326 612)

Defendant

AMENDED DEFENCE

Filed pursuant to orders made on 27 March 2026~~28 October 2025~~

Date of Document:	<u>30 March 2026</u> 17 November 2025	Solicitors Code:	21455
Filed on behalf of:	The Defendant	Telephone:	(03) 9613 1011
Prepared by:	Allens	Ref:	121340053
	Level 37, 101 Collins St	Email:	Andrew.Maher@allens.com.au
	Melbourne VIC 3000		

To the allegations in the Further Amended Statement of Claim dated 28 October 2025 (**FASOC**), the Defendant (**Sportsbet**) says as follows (where practicable, using the defined terms and headings used in the FASOC) by way of defence.

A. PARTIES

A.1 The Defendant

1. Sportsbet admits the allegations in paragraph 1.

A.2 The Plaintiff and Group Members

2. As to paragraph 2, Sportsbet:

(a) admits the allegations in paragraphs 2(a) to 2(e);

- (b) in answer to paragraph 2(f):
 - (i) admits that the Plaintiff placed one or more bets with Sportsbet using Bet Live Services (defined in paragraph 8 below) in the period August 2019 to December 2021;
 - (ii) denies that it provided the alleged Fast Code Service;
 - (iii) otherwise does not admit the allegations.
- 3. As to paragraph 3, Sportsbet:
 - (a) says that the alleged “Relevant Period” in paragraph 3(a) is embarrassing because it does not state when the alleged period concluded;
 - (b) otherwise does not plead to the paragraph.
- 4. As to paragraph 4, Sportsbet:
 - (a) denies that any person suffered loss or damage by reason of the conduct of Sportsbet;
 - (b) otherwise does not admit the allegations.
- 5. Sportsbet admits the allegations in paragraph 5.

B. ALLEGED CONDUCT OF SPORTSBET

B.1 Alleged Fast Code Service

- 6. As to paragraph 6, Sportsbet:
 - (a) admits the allegations;
 - (b) says that at all material times it also supplied services for the placing, making, receiving or acceptance of bets by telephone.
- 7. As to paragraph 7, Sportsbet:
 - (a) admits that, during the Relevant Period, customers in Australia were able to place bets with Sportsbet on certain sporting events after the events had begun:
 - (i) relating to the outcome of the events; or

- (ii) in some cases, on contingencies that may or may not happen in the course of the events,

(live bets);

- (b) says that it only accepted live bets by telephone through Bet Live Services (defined in paragraph 8 below);
- (c) otherwise denies the allegations.

8. As to paragraph 8, Sportsbet:

- (a) refers to and repeats paragraph 7 above;
- (b) says that, during the Relevant Period, Sportsbet provided a service (**Bet Live Service**) by which a live bet could be placed as follows:
 - (i) a customer made a telephone call to Sportsbet and spoke with a Sportsbet operator;
 - (ii) the telephone operator verified the customer's identity;
 - (iii) the customer provided to the telephone operator information concerning the bet the customer wished to place, including:
 - A. the event on which the customer wished to place a bet (e.g., AFL, Geelong v Carlton) (**bet event**);
 - B. the outcome or contingency in respect of which the customer wished to place a bet (e.g., Geelong to win, or Geelong to win by more than 25 points) (**bet selection**);
 - (iv) the telephone operator asked, and in response the customer stated, the amount the customer wished to bet;
 - (v) the telephone operator:
 - A. repeated the bet event, bet selection and bet amount;
 - B. stated the odds for the bet (which may have changed during the course of the telephone call);
 - C. asked the customer if the customer wished to proceed with the bet;

- (vi) if the customer stated that they did wish to proceed with the bet, the telephone operator submitted the bet in Sportsbet's betting system and notified the customer that the bet had been placed;
 - (vii) the amount of the bet showed in the customer's Sportsbet account as deducted when the bet was confirmed, and was deducted once the outcome or contingency in respect of which the bet was placed was known;
- (c) says further that:
- (i) when placing some (but not all) live bets, a customer had the option of providing to Sportsbet the bet event and bet selection as referred to in paragraph 8(b)(iii) above by stating a two or three letter code (**Fast Code**) to the operator during the voice call;
 - (ii) a Fast Code could be obtained by the customer logging into their Sportsbet account on the Sportsbet Website or Sportsbet App and pressing a bet event and bet selection;
 - A. in the case of the Sportsbet Website, the Fast Code for that bet event and bet selection was displayed on the website, together with a telephone number for Sportsbet;
 - B. in the case of the Sportsbet App, the Fast Code for the bet event and bet selection was displayed on the app together with a button labelled "Call to Bet" which, if pressed, initiated a telephone call to Sportsbet;
- (d) otherwise denies the allegations.

B.2 Alleged Relevant Conduct

9. As to paragraph 9, Sportsbet:

- (a) admits that Bet Live Services were:
 - (i) gambling services within the meaning of s 4 of the IGA;
 - (ii) in-play betting services within the meaning of s 10B of the IGA;
 - (iii) provided in the course of carrying on a business within the meaning of s 5(1)(a) of the IGA;

- (iv) provided in trade or commerce within the meaning of s 2 of the ACL;
 - (v) provided to customers using listed carriage services within the meaning of s 5(b)(ii) of the IGA;
 - (b) otherwise denies the allegations.
10. As to paragraph 10, Sportsbet:
- (a) admits that Bet Live Services were provided on the basis of dealings with the customer within the meaning of s 8AA(1)(a) of the IGA;
 - (b) says that:
 - (i) the dealings were wholly by way of voice calls made using a carriage service;
 - (ii) Bet Live Services were telephone betting services within the meaning of s 8AA(1) of the IGA;
 - (c) otherwise denies the allegations.
11. As to paragraph 11, Sportsbet:
- (a) denies the allegations;
 - (b) says that when customers used a Fast Code to place a live bet, they were only able to provide selection of a bet, and selection of a bet type, to Sportsbet within the meaning of s 8AA(8) of the IGA when they stated the Fast Code to the telephone operator on the voice call referred to in paragraph 8(b) above.
12. As to paragraph 12, Sportsbet:
- (a) refers to and repeats paragraphs 8 to 11 above;
 - (b) denies the allegations;
13. As to paragraph 13, Sportsbet:
- (a) admits that Bet Live Services were gambling services with an “Australian-customer link” within the meaning of s 8 of the IGA;
 - (b) otherwise denies the allegations.

14. As to paragraph 14, Sportsbet:

- (a) refers to and repeats paragraphs 8 to 12 above;
- (b) denies the allegations.

B.3 Alleged Terms & Conditions

15. As to paragraph 15, Sportsbet:

- (a) admits that, at all material times, it provided Bet Live Services subject to written terms and conditions;
- (b) says that:
 - (i) the terms and conditions were the “Sportsbet Rules, Terms & Conditions” published on the Sportsbet Website and on the Sportsbet App;
 - (ii) references or admissions herein concerning “Terms & Conditions” should be read as references or admissions to the “Sportsbet Rules, Terms & Conditions” published on the Sportsbet Website and on the Sportsbet App;
- (c) otherwise denies the allegations.

16. As to paragraph 16, Sportsbet:

- (a) admits that the Terms & Conditions contained terms to the effect alleged;
- (b) says that it may at trial rely upon the Terms & Conditions for their full terms and effect;
- (c) otherwise denies the allegations.

17. Sportsbet admits the allegations in paragraph 17.

C. ALLEGED BET CONTRACTS

18. As to paragraph 18, Sportsbet:

- (a) refers to and repeats paragraphs 15 and 16 above;
- (b) admits that the Plaintiff accepted the Terms & Conditions alleged in paragraph 16;

- (c) does not admit that the Plaintiff read the Terms & Conditions alleged in paragraph 16;
 - (d) otherwise denies the allegations.
19. As to paragraph 19, Sportsbet:
- (a) admits that during the period 25 August 2019 to 26 December 2021:
 - (i) the Plaintiff placed bets using Bet Live Services, in the manner referred to in paragraph 8(b) above;
 - (ii) for the bets listed in Annexure A to the Amended Statement of Claim, the Plaintiff provided to Sportsbet the bet event and bet selection in the manner referred to in paragraph 8(c) above;
 - (b) otherwise denies the allegations.
20. As to paragraph 20, Sportsbet:
- (a) admits that on each occasion the Plaintiff placed a live bet with Sportsbet using Bet Live Services the Plaintiff made that bet pursuant to a contract;
 - (b) says that:
 - (i) the contract was entered into when the Plaintiff opened an account with Sportsbet;
 - (ii) the terms of the contract were the Terms & Conditions;
 - (c) otherwise denies the allegations.
21. As to paragraph 21, Sportsbet:
- (a) refers to and repeats paragraph 4 above;
 - (b) admits that, during the Relevant Period, when customers placed a live bet with Sportsbet using Bet Live Services they did so pursuant to a contract;
 - (c) says that:
 - (i) the contract was entered into when the customer opened an account with Sportsbet;

- (ii) the terms of the contract were the Terms & Conditions;
 - (iii) at all relevant times, the Terms & Conditions provided that they were governed by and were to be construed in accordance with the laws of the Northern Territory;
- (d) otherwise denies the allegations.

D. ALLEGED CONTRAVENTIONS OF THE ACL

D.1 Alleged contravening conduct – s 18 of the ACL

- 22. Sportsbet denies the allegations in paragraph 22.
- 23. Sportsbet denies the allegations in paragraph 23.
- 24. Sportsbet denies the allegations in paragraph 24.
- 25. Sportsbet denies the allegations in paragraph 25.
- 26. Sportsbet denies the allegations in paragraph 26.

E. CONTRACT CLAIMS

E.1 Alleged Breach of Bet Contract

- 27. As to paragraph 27, Sportsbet:
 - (a) refers to and repeats paragraphs 8 to 12 and 14 to 16 above;
 - (b) denies the allegations.

E.2 Alleged Ground of Restitution

- 28. As to paragraph 28, Sportsbet:
 - (a) refers to and repeats paragraphs 8 to 12 and 14 to 16 above;
 - (b) denies the allegations.
- 29. Sportsbet denies the allegations in paragraph 29.

29A. In further answer to paragraphs 27 to 29, Sportsbet says that insofar as the Plaintiff's claims for breach of contract and restitution are made in respect of payments made on or before 24 December 2021:

- (a) the alleged causes of action accrued on the date of such payment;
- (b) three years have elapsed since such payment; and
- (c) it follows that those claims are statute-barred by operation of s 12(1)(a) the *Limitation Act 1981* (NT).

F. ALLEGED LOSS OR DAMAGE

F.1 ACL claims

30. As to paragraph 30, Sportsbet:

- (a) refers to and repeats paragraphs 8 to 12, 14, 16 and 18 above;
- (b) denies the allegations.

31. As to paragraph 31, Sportsbet:

- (a) refers to and repeats paragraphs 8 to 12, 14, 16 and 18 above;
- (b) otherwise denies the allegations.

32. As to paragraph 32, Sportsbet:

- (a) denies the allegations;
- (b) says that if the Plaintiff and some or all Group Members had not lost the amounts claimed placing bets using the Bet Live Service then the Plaintiff and some or all Group Members would have lost those amounts by placing bets using the Bet Live Service without a Fast Code and/or by using alternative betting services provided by Sportsbet and/or other wagering service providers.

33. As to paragraph 33, Sportsbet:

- (a) denies the allegations;
- (b) refers to and repeats paragraph 32(b).

F.2 Alleged Breach of Bet Contract

34. As to paragraph 34, Sportsbet:

- (a) denies the allegations;
- (b) refers to and repeats paragraph 32(b).

F.3 Alleged Entitlement to Restitution

35. Sportsbet denies the allegations in paragraph 35.

36. As to paragraph 36, Sportsbet:

- (a) denies the allegations;
- (b) says that, for each bet placed using the Bet Live Service with a Fast Code, Sportsbet provided good consideration, namely a promise to pay winnings depending on the outcome or contingency in respect of which the bet was placed;
- (c) further or alternatively, says that:
 - (i) when or as a result of receiving amounts wagered using the Bet Live Service with a Fast Code, it:
 - A. incurred the risk of paying winnings;
 - B. expended the amounts on winnings; ~~and/or~~
 - C. incurred tax liability; and/or
 - D. paid product and services fees and charges.

Particulars

- (1) As to paragraph 36(c)(i)(A), Sportsbet incurred the risk of paying winnings on all losing bets placed by the Plaintiff using a Fast Code.
- (2) As to paragraph 36(c)(i)(B), a proportion of the amounts wagered by the Plaintiff on losing bets placed using a Fast Code were expended on winnings.

- (3) As to paragraph 36(c)(i)(C), during the Relevant Period, Sportsbet became liable to pay and did pay, as a result of receiving the amounts wagered by the Plaintiff on losing bets placed using a Fast Code:
- a) income tax pursuant to the *Income Tax Assessment Act 1936* (Cth);
 - b) goods and services tax pursuant to *A New Tax System (Goods and Services Tax) Act 1999* (Cth); and
 - c) point of consumption tax pursuant to the *Betting Tax Act 2001* (NSW).
- (4) As to paragraph 36(c)(i)(D), during the Relevant Period, Sportsbet became liable to pay and did pay, as a result of receiving the amounts wagered by the Plaintiff on losing bets placed using a Fast Code:
- a) product fees pursuant to Integrity and Product Fee Agreements entered into with Australian Rugby League Commission Limited and National Rugby League Limited; and
 - b) service fees and charges pursuant to:
 - (i) an agreement with Paddy Power LLC titled Sports Betting Pricing Services Agreement dated 19 December 2013;
 - (ii) an agreement with Power Leisure Bookmakers Limited – Irish Branch titled Sports Betting Pricing Services Agreement dated 2 January 2023; and
 - (iii) an agreement with Power Leisure Bookmakers Ltd – Head Office titled Value Added Services Agreement dated 21 December 2011 and amended by a Deed of Amendment dated 14 December 2017.

(5) Particulars of the proportion referred to in paragraph (2) and the amounts referred to in paragraphs (3) and (4) of these particulars will be provided following the service of expert evidence.

(ii) in the circumstances, it has changed its position to its detriment and it would be inequitable for it to be required now to repay the amounts.

36A. In the alternative to paragraph 36, if (which is denied) the Court finds that Sportsbet is required to make restitution to the Plaintiff in respect of bets placed using the Fast Code Service with a Fast Code:

- (a) it would be inequitable not to bring into account (by way of counter-restitution or otherwise) winnings Sportsbet paid to the Plaintiff and other Group Members for bets they placed using the Bet Live Service with a Fast Code during the Relevant Period;
- (b) any order for restitution to the Plaintiff should be no more than the amount of his net losses from bets he placed using the Bet Live Service with a Fast Code during the Relevant Period, being \$2,307.83, as set out in Annexure A to the FASOC (and likewise for other Group Members).

G. ORDERS SOUGHT BY THE PLAINTIFF

37. As to paragraph 37, Sportsbet:

- (a) denies that the Plaintiff or Group Members are entitled to the relief referred to in the paragraph;
- (b) otherwise does not plead to the paragraph.

H. COMMON QUESTIONS OF LAW OR FACT

38. Sportsbet does not plead to Section H.

COUNTERCLAIM

If (which is denied) Sportsbet is obliged to make restitution to the Plaintiff and Group Members of all payments the Plaintiff and Group Members made to Sportsbet pursuant to Losing Bet Contracts, for the purposes of this counterclaim only, Sportsbet says as follows (where practicable, using the defined terms used in the FASOC).

39. Sportsbet refers to and repeats paragraphs 6 to 20 and 28 of the FASOC.
40. By reason of the matters alleged in paragraph 28 of the FASOC, each bet placed by the Plaintiff pursuant to a Bet Contract that resulted in a win to the Plaintiff (**Winning Bet Contract**) is void or alternatively unenforceable (and likewise for other Group Members).
41. In the premises:
- (a) the Plaintiff has been enriched, in respect of Winning Bet Contracts, by the amount paid by Sportsbet to the Plaintiff in winnings, less the amount staked by the Plaintiff, as identified in Annexure A to this pleading (**Net Winnings**);
 - (b) the enrichment was at the expense of Sportsbet;
 - (c) the enrichment is unjust because the Net Winnings were paid to the Plaintiff on a basis which has failed;
 - (d) the Net Winnings are moneys had and received to which the Plaintiff has no title or legal title and/or legal entitlement to retain; and/or
 - (e) the Plaintiff is obliged to make restitution and repay those payments to Sportsbet,
- (and likewise for other Group Members).

Dated: 30 March 2026~~17 November 2025~~

Michael Borsky

Andrew Barraclough

Allen

Allens

Solicitors for the defendant

ANNEXURE A

Date	Bet code	Stake	Result	Amount won/returned	Net winnings
29 August 2020	O/2721854/0001579/D	\$400.00	Win	\$740.00	\$340.00
23 December 2020	O/2721854/0001893/D	\$400.00	Win	\$800.00	\$400.00
2 January 2021	O/2721854/0001944/D	\$300.00	Win	\$570.00	\$270.00
12 January 2021	O/2721854/0001998/D	\$750.00	Win	\$1,500.00	\$750.00
12 January 2021	O/2721854/0002002/D	\$275.00	Win	\$322.66	\$47.66
19 January 2021	O/2721854/0002052/D	\$270.00	Win	\$486.00	\$216.00
5 February 2021	O/2721854/0002299/D	\$350.00	Win	\$700.00	\$350.00
21 March 2021	O/2721854/0002669/D	\$215.00	Win	\$367.65	\$152.65
25 April 2021	O/2721854/0002951/D	\$150.00	Win	\$394.50	\$244.50
12 July 2021	O/2721854/0003733/D	\$75.00	Win	\$150	\$75.00
Total winnings from winning bets					\$2,845.81