



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

Case: S ECI 2025 01120

Filed on: 13/04/2026 04:52 PM

No. S ECI 2025 01120

B E T W E E N

Jeremy Bergman

Plaintiff

-and-

Entain Group Pty Limited (ACN 151 956 768)

Defendant

AMENDED DEFENCE AND COUNTERCLAIM

Amended pursuant to rule 36.04(1)(a) of the Supreme Court (General Civil Procedure)
Rules 2015

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This Defence and Counterclaim is filed pursuant to order 1 of the orders made on 15 December 2025 by the Honourable Justice Craig.

In answer to the Plaintiff's Amended Statement of Claim (ASOC) dated 1 December 2025, the Defendant (**Entain**) says as follows, adopting the headings and definitions in the ASOC unless otherwise stated and without admission as to the accuracy of those headings and definitions:

A. Parties

A.1 The Defendant

1. As to paragraph 1, Entain:

- (a) admits the allegations in sub-paragraph 1(a);
- (b) admits the allegations in sub-paragraph 1(b);
- (c) as to the allegations in sub-paragraph 1(c):
 - (i) admits that it offers its customers in Australia a service for the placing, making, receiving or acceptance of bets on horse racing, harness racing, greyhound racing and other sporting events using an internet carriage service where the bets are placed, made, received or accepted before the beginning of the race or event; and
 - (ii) otherwise denies the allegations in sub-paragraph 1(c);
- (d) admits the allegations in sub-paragraph 1(d); and
- (e) admits the allegations in sub-paragraph 1(e).

A.2 The Plaintiff and Group Members

2. As to paragraph 2, Entain:

- (a) admits the allegation in sub-paragraph 2(a);
- (b) admits the allegation in sub-paragraph 2(b);
- (c) as to the allegations in sub-paragraph 2(c), admits that the Plaintiff held a betting account:
 - (i) with Ladbrokes from 9 August 2019 until 16 April 2024; and
 - (ii) with Neds since 25 August 2019;

- (d) admits that the Plaintiff was a customer of Entain within the meaning of the IGA from 9 August 2019;
- (e) admits the allegation in sub-paragraph 2(e);
- (f) denies the allegation in sub-paragraph 2(f); and
- (g) otherwise denies the allegations in paragraph 2.

3. As to paragraph 3, Entain:

- (a) refers to and repeats paragraphs 6 to 40 below; and
- (b) otherwise denies the allegations in paragraph 3.

4. As to paragraph 4, Entain:

- (a) refers to and repeats paragraphs 6 to 40 below; and
- (b) otherwise denies the allegations in paragraph 4.

5. As to paragraph 5, Entain:

- (a) refers to and repeats paragraphs 6 to 40 below; and
- (b) otherwise denies the allegations in paragraph 5.

B. Entain's Alleged Conduct

B.1 The Fast Code Service

6. As to paragraph 6, Entain:

- (a) admits that it has provided a service for the placing, making, receiving or acceptance of bets on horse racing, harness racing, greyhound racing and other sporting events through the Entain Websites and the Entain Apps where the placing, making, receiving or acceptance of bets occurs before the beginning of the race or event; and
- (b) otherwise denies the allegations in paragraph 6.

7. As to paragraph 7, Entain:
 - (a) refers to and repeats paragraphs 8A to 8C below; and
 - (b) otherwise admits the allegations in paragraph 7.
8. As to paragraph 8, Entain:
 - (a) refers to and repeats paragraphs 8A to 8C below; and
 - (b) otherwise denies the allegations in paragraph 8.
- 8A. During the Relevant Period, Entain provided a service to customers of Entain in Australia relating to betting:
 - (a) on the outcome of a sporting event, where the bet is placed, made, received or accepted after the beginning of the event; or
 - (b) on a contingency that may or may not happen in the course of a sporting event, where the bet is placed, made, received or accepted after the beginning of the event,

(Live Bet) on the basis set out in paragraph 8C below (Live Betting Service).
- 8B. During the Relevant Period, a person could:
 - (a) access the Entain Websites or Entain Apps;
 - (b) navigate to the live betting page;
 - (c) navigate to the page for a particular event for which live betting was available;
 - (d) navigate to the page for the particular bet types available for that event; and
 - (e) click on a button for a particular bet selection for a particular bet type;in which case the Entain Websites or Entain Apps would:
 - (f) between the start of the Relevant Period and 12 September 2023:

- (i) if the person was the first person to click on the button referred to in sub-paragraph 8B(e):
 - (A) randomly assign a short code made up of a combination of letters and numbers applicable to that particular bet selection (**Fast Code**); and
 - (B) display that Fast Code to the person; or
- (ii) if the person was not the first person to click on the button referred to in sub-paragraph 8B(e), display a Fast Code applicable to that particular bet selection that had already been randomly assigned when the first person clicked on the button referred to in sub-paragraph 8B(e);
- (g) between 13 September 2023 and the end of the Relevant Period, display to the person a Fast Code applicable to that particular bet selection that was assigned at the time the market went live prior to and independently of any person clicking on the button referred to in sub-paragraph 8B(e); and
- (h) display to the person:
 - (i) in the case of the Entain Websites — a telephone number for Entain’s betting line; or
 - (ii) in the case of the Entain Apps — a button labelled “Call now to place bet”, which button, if pressed, pre-fills the telephone number for Entain’s betting line on the person’s phone.

8C. During the Relevant Period, Entain’s Live Betting Service operated on the following basis:

- (a) a customer of Entain initiating a telephone call to Entain and speaking with an Entain telephone operator (**Operator**);
- (b) the Operator verifying the customer’s identity;

- (c) the customer providing the Operator with the event, bet type and bet selection **(Bet Information)** by:
 - (i) the customer stating those matters to the Operator; and/or
 - (ii) the customer stating a Fast Code to the Operator;
- (d) the Operator entering:
 - (i) the Bet Information as stated by the customer in the Entain system; or
 - (ii) the Fast Code as stated by the customer in the Entain system, which would display to the Operator the Bet Information for that Fast Code;
- (e) the Operator:
 - (i) in some but not all cases after entering a Fast Code in the Entain system, stating the Bet Information applicable to the Fast Code to the customer;
 - (ii) stating that all live betting is subject to change and suspension;
 - (iii) stating the current odds for the bet;
 - (iv) asking the customer for the amount of the bet;
- (f) the customer stating the bet amount;
- (g) the Operator entering the bet amount in the Entain system;
- (h) the Operator:
 - (i) re-stating the customer's Bet Information and bet amount; and
 - (ii) asking the customer for confirmation of the bet;
- (i) the customer confirming the bet as stated by the Operator;
- (j) the Operator:
 - (i) placing the bet for the customer; and

- (ii) submitting the bet in the Entain system;
 - (k) the Operator confirming to the customer that the bet has been successfully placed; and
 - (l) the bet amount being deducted from the customer's Entain account.
9. As to paragraph 9, Entain:
- (a) refers to and repeats paragraphs 8A to 8C above; and
 - (b) otherwise denies the allegations in paragraph 9.

B.2 Relevant Conduct

10. As to paragraph 10, Entain:
- (a) as to the allegations in sub-paragraph 10(a), admits that the elements of the Live Betting Service identified above in paragraphs 8C(a), (b), (c), (d), (e)(i), (iii) and (iv), (f), (g), (h), (i) and (j) comprise a gambling service within the meaning of s 4 of the IGA;
 - (b) as to the allegations in sub-paragraph 10(b), subject to the matters set out in sub-paragraph 10(a) above, admits that the Live Betting Service involved an in-play betting service within the meaning of s 10B of the IGA;
 - (c) as to the allegations in sub-paragraph 10(c), subject to the matters set out in sub-paragraph 10(a) above, admits that the Live Betting Service was provided in the course of carrying on a business within the meaning of s 5(1)(a) of the IGA;
 - (d) as to the allegations in sub-paragraph 10(d), admits that the Live Betting Service was provided in trade or commerce within the meaning of s 2 of the ACL;
 - (e) as to the allegations in sub-paragraph 10(e), subject to the matters set out in sub-paragraph 10(a) above, admits that the Live Betting Service was provided to customers using a listed carriage service within the meaning of s 5(1)(b)(ii) of the IGA;

- (f) as to the allegations in sub-paragraph 10(f), admits that the Live Betting Service was not an excluded wagering service under s 5(3)(aa) and s 8A(3) of the IGA; and
 - (g) otherwise denies the allegations in paragraph 10.
11. As to paragraph 11, Entain:
- (a) as to the allegations in sub-paragraph 11(a), admits that the Live Betting Service was provided on the basis of dealings with customers as set out in paragraphs 8C(a), (b), (c), (e)(i), (iii) and (iv), (f), (h), and (i) above (**Live Betting Service Dealings**) within the meaning of s 8AA(1)(a) of the IGA;
 - (b) denies the allegations in sub-paragraphs 11(b) and (c) and says further that the Live Betting Service Dealings were provided wholly by way of voice call using a carriage service within the meaning of s 8AA(1)(a) of the IGA; and
 - (c) otherwise denies the allegations in paragraph 11.
12. As to paragraph 12, Entain:
- (a) denies the allegations in paragraph 12;
 - (b) refers to and repeats paragraph 11 above; and
 - (c) says further that the Live Betting Service was provided on the basis that the bet selection, bet type, bet amount and confirmation of bet (each within the meaning of sub-paragraph 8AA(8) of the IGA) had to be provided by the customer by way of a voice call in the Live Betting Service Dealings.
13. As to paragraph 13, Entain:
- (a) denies the allegations in paragraph 13; and
 - (b) refers to and repeats paragraphs 11 to 12 above.
14. As to paragraph 14, Entain:

- (a) subject to the matters set out in sub-paragraph 10(a) above, admits that the Live Betting Service was a gambling service with an “Australian-customer link” within the meaning of s 8 of the IGA; and
- (b) otherwise denies the allegations in paragraph 14.

15. As to paragraph 15, Entain:

- (a) admits that Entain was providing the Live Betting Service as at the date of the filing of the ASOC, being 1 December 2025; and
- (b) otherwise denies the allegations in paragraph 15.

16. Entain denies the allegations in paragraph 16.

B.3 The Terms & Conditions

17. As to paragraph 17, Entain:

- (a) admits that, during the Relevant Period and at all material times, all customers of Entain had accounts with Entain which were subject to written terms and conditions (**Entain Terms & Conditions**);

Particulars

From the start of the Relevant Period to 3 September 2020, the written terms and conditions were styled “Terms of Use” which were published on the Entain Websites and the Entain Apps.

From 4 September 2020 to the end of the Relevant Period and at all material times thereafter, the written terms and conditions were styled “Terms of Use” and “Promotional Terms and Conditions” which were published on the Entain Websites and the Entain Apps.

- (b) otherwise denies the allegations in paragraph 17.

18. As to paragraph 18, Entain:

- (a) admits that the Entain Terms & Conditions contained a term to the effect alleged in sub-paragraph 18(a);
- (b) admits that the Entain Terms & Conditions contained terms to the effect alleged in sub-paragraph 18(b);

- (c) admits that the Entain Terms & Conditions contained terms to the effect alleged in sub-paragraph 18(c);
- (d) admits that the Entain Terms & Conditions contained a term to the effect alleged in sub-paragraph 18(d);
- (e) as to the allegations in sub-paragraph 18(e), admits that:
 - (i) from the start of the Relevant Period to 24 May 2021, the Entain Terms & Conditions provided that:
 - (A) the customer agrees not to open an account or attempt to use their account if they are within a restricted jurisdiction; and
 - (B) Entain reserves the right to void any bets and close a customer's account if the customer is a resident of or located in a jurisdiction that Entain considered to be a "restricted jurisdiction" or otherwise from where it is unlawful for the customer to bet with Entain;
 - (ii) from 25 May 2021 to the end of the Relevant Period and at all material times thereafter, the Entain Terms & Conditions provided that:
 - (A) the customer agrees not to open an account unless they are resident in Australia or New Zealand; and
 - (B) Entain reserves the right to void any bets and close the customer's account if the customer opens an account or places any bets whilst physically located in a jurisdiction that has laws, regulations or other rules in place making it unlawful for the customer to do so, and the customer is not entitled to any winnings that would otherwise accrue if the customer accesses or uses Entain's betting platforms and/or places a bet whilst located in any jurisdiction where it is illegal for the customer to take those actions;
- (f) as to the allegations in sub-paragraph 18(f), admits that:

- (i) from the start of the Relevant Period to 24 May 2021, the Entain Terms & Conditions provided that the customer may only access or use Entain's betting platforms and/or open an account with Entain if it is legal for the customer to do so within their jurisdiction, and that the customer warrants that it is not illegal in their jurisdiction to access or use Entain's betting platforms and/or open an account with Entain; and
 - (ii) from 25 May 2021 to the end of the Relevant Period and at all material times thereafter, the Entain Terms & Conditions provided that the customer may only access or use Entain's betting platforms if it is legal for the customer to do so within the jurisdiction they are physically present in, and that the customer warrants at all times that it is not illegal in the relevant jurisdiction for the customer to access or use Entain's betting platforms;
- (g) as to the allegations in sub-paragraph 18(g), admits that:
- (i) from 10 October 2018 to 24 May 2021, the Entain Terms & Conditions provided that the accessibility of Entain's betting platforms in any jurisdictions in which such activities are illegal does not constitute an offer, solicitation or invitation by Entain for the use of Entain's betting platforms or placing a bet with Entain;
 - (ii) from 25 May 2021 to 26 September 2023, the Entain Terms & Conditions provided that the accessibility of Entain's betting platforms in any jurisdictions in which Entain's products and services are illegal does not constitute an offer, solicitation or invitation by Entain for the use of Entain's betting platforms or placing a bet with Entain; and
 - (iii) from 27 September 2023 to the end of the Relevant Period and at all material times thereafter, the Entain Terms & Conditions provided that the accessibility of the customer's account and Entain's platforms in any jurisdictions in which Entain's products and services are illegal does not constitute an offer, solicitation or invitation by Entain for the use of Entain's betting platforms or placing a bet with Entain;

- (h) admits that the Entain Terms & Conditions contained a term to the effect alleged in sub-paragraph 18(h);
- (i) admits that the Entain Terms & Conditions contained a term to the effect alleged in sub-paragraph 18(i);
- (j) admits that the Entain Terms & Conditions contained a term to the effect alleged in sub-paragraph 18(j);
- (k) admits that the Entain Terms & Conditions contained a term to the effect alleged in sub-paragraph 18(k);
- (l) says that it will at trial rely upon the Entain Terms & Conditions for their full terms and effect; and
- (m) otherwise denies the allegations in paragraph 18.

19. Entain denies the allegations in paragraph 19.

20. As to paragraph 20, Entain:

- (a) refers to and repeats paragraphs 17 to 18 above; and
- (b) otherwise denies the allegations in paragraph 20.

C. The Bet Contracts

21. As to paragraph 21, Entain:

- (a) refers to and repeats paragraphs 17 to 18 above; and
- (b) otherwise denies the allegations in paragraph 21.

22. As to paragraph 22, Entain:

- (a) denies the allegations in paragraph 22;
- (b) says further that, on 10 October 2020:

- (i) Entain was offering a Live Betting Service in respect of the sporting event of LA Lakers v Miami Heat with a bet type of win (head-to-head);
- (ii) the Plaintiff initiated the telephone call to Entain and spoke to an Operator;
- (iii) the Operator verified the Plaintiff's identity;
- (iv) during that telephone call, the Plaintiff:
 - (A) stated that he wanted to have \$475 on the LA Lakers to win live; and
 - (B) subsequently referred to the Fast Code for that Bet Information;
- (v) the Operator:
 - (A) did not enter the Fast Code in Entain's system; and
 - (B) entered the Bet Information in Entain's system;
- (vi) the Operator:
 - (A) stated that all live betting is subject to change and suspension;
 - (B) stated the current odds to the Plaintiff: \$1.45;
 - (C) stated the Plaintiff's Bet Information and bet amount: \$475 at \$1.45 on the LA Lakers to win; and
 - (D) asked the Plaintiff for confirmation of the bet;
- (vii) the Plaintiff confirmed the bet as stated by the Operator;
- (viii) the Operator then:
 - (A) placed the Live Bet for the Plaintiff; and
 - (B) submitted the Live Bet in Entain's system;
- (ix) the Operator confirmed to the Plaintiff that the Live Bet had been placed; and

(x) the bet amount was deducted from the Plaintiff's Ladbrokes account.

23. Entain:

(a) says that the Plaintiff's Live Bet was made on his Ladbrokes account, which was subject to the Entain Terms & Conditions, on the basis of the Live Betting Service as referred to in paragraphs 8C(a), (b), (c), (d)(i), (e)(ii)–(iv), (f)–(l); and

(b) otherwise denies the allegations in paragraph 23.

24. As to paragraph 24, Entain:

(a) says that customers of Entain made Live Bets on their Entain accounts, which were subject to the Entain Terms & Conditions, on the basis of the Live Betting Service; and

(b) otherwise denies the allegations in paragraph 24.

D. Contraventions of the ACL

D.1 Contravening conduct – s 18 of the ACL

25. Entain denies the allegations in paragraph 25.

26. As to paragraph 26, Entain:

(a) denies the allegations in paragraph 26; and

(b) says further that, if the Fast Code Service Representation was made and was a representation of opinion (as alleged by the Plaintiff), Entain had reasonable grounds for the making of that representation.

Particulars

Entain refers to and repeats paragraphs 8A to 16 above.

Further particulars will be provided following evidence.

27. As to paragraph 27, Entain:

(a) denies the allegations in paragraph 27; and

- (b) says further that, if the Fast Code Service Representation was made and was with respect to a future matter (as alleged by the Plaintiff), Entain had reasonable grounds for the making of that representation.

Particulars

Entain refers to and repeats paragraphs 8A to 16 above.

Further particulars will be provided following evidence.

28. Entain denies the allegations in paragraph 28.
29. Entain denies the allegations in paragraph 29.

E. Contract Claims

E.1 Breach of Bet Contract

30. Entain denies the allegations in paragraph 30.

E.2 Illegality

31. Entain denies the allegations in paragraph 31.
32. Entain denies the allegations in paragraph 32.

F. Loss or damage

F.1 ACL claims

33. Entain denies the allegations in paragraph 33.
34. Entain denies the allegations in paragraph 34.
35. Entain denies the allegations in paragraph 35.
36. Entain denies the allegations in paragraph 36.

F.2 Breach of Bet Contract

37. Entain denies the allegations in paragraph 37.

- 37A. Further to paragraphs 36 to 37 above, if (which is denied) the Plaintiff or any Group Members would not have placed bets using the alleged Fast Code Service as alleged in paragraph 33 of the ASOC and in the particulars to paragraph 37 of the ASOC, then the Plaintiff and some or all Group Members would have placed the bets in any event using the Live Betting Service without a Fast Code or with alternative gambling service providers.
- 37B. Further or alternatively, if (which is denied) the Plaintiff or any Group Member have suffered loss or damage as alleged in paragraphs 35, 36 and/or 37 of the ASOC, then the amount of any such loss or damage is the amount of any bets placed pursuant to the Live Betting Service identified in paragraphs 8C(a), (b), (c)(ii), (d)(ii), (e)–(l) above by the Plaintiff or any Group Member which resulted in a loss (**Losing Bets**) less the amount of any winnings in respect of bets placed pursuant to the Live Betting Service identified in paragraphs 8C(a), (b), (c)(ii), (d)(ii), (e)–(l) above by the Plaintiff or any Group Member ~~which resulted in winnings paid by Entain to the Plaintiff or any Group Member~~ (**Winnings-Bets**).

F.3 Restitution

38. Entain denies the allegations in paragraph 38.
39. As to paragraph 39, Entain:
- (a) denies the allegations in paragraph 39;
 - (b) says further or in the alternative that the Plaintiff and any Group Member have no entitlement to restitution from Entain because:
 - (i) Entain provided good consideration for payments made by the Plaintiff and any Group Member pursuant to the Live Betting Service, being the chance to recover winnings dependent upon the outcome or contingency upon which the bet was placed;
 - (ii) any payments made by the Plaintiff and any Group Member pursuant to the Live Betting Service were voluntary in the sense that the Plaintiff and any Group Member was prepared to assume that the relevant bet contract was legal, or to make the payment irrespective of any illegality; and

- (iii) Entain, acting in good faith and in reliance on the receipt of payments from customers using the Live Betting Service, changed its position to its detriment by paying out winnings to customers and incurring tax liabilities and, for some events, product fees.

39A. In the alternative, if (which is denied) Entain is liable to the Plaintiff or any Group Member in restitution in respect of Losing Bets Contracts as alleged in paragraph 39 of the ASOC, then the amount of any Winnings Bets paid by Entain to the Plaintiff or any Group Member must be taken into account, such that any order for restitution should be no more than the amount of any net loss of the Plaintiff or any Group Member.

39AA. In the alternative to paragraph 39A, if (which is denied) Entain is liable to the Plaintiff or any Group Member in restitution in respect of Losing Bet Contracts as alleged in paragraph 39 of the ASOC, then Entain:

- (a) refers to and repeats paragraphs 1 to 6 of the Counterclaim below; and
- (b) is entitled to set-off the amount of any Winnings against the amount of any restitution awarded to the Plaintiff or any Group Member in respect of Losing Bets.

39B. In further answer to the Plaintiff's claims for breach of contract and restitution, to the extent that such claims concern payments made on or before 4 March 2022, those claims are statute-barred by operation of s 12(1)(a) of the *Limitation Act 1981* (NT).

G. Orders sought by the Plaintiff

40. As to paragraph 40, Entain:

- (a) denies that the Plaintiff or Group Members are entitled to the relief referred to in paragraph 40 or to any relief; and
- (b) otherwise does not plead to the paragraph.

H. Common questions of law or fact

41. Entain does not plead to Section H.

COUNTERCLAIM

~~If Entain is liable in restitution to the Plaintiff and Group Members for all payments made by the Plaintiff and Group Members to Entain pursuant to Losing Bet Contracts without taking into account any winnings paid by Entain to the Plaintiff and Group Members (which is denied)~~ Further or in the alternative to paragraph 39AA of the Amended Defence above, Entain says as follows by way of counterclaim:

1. Entain refers to and repeats paragraphs 6 to 24 and 31 of the ASOC.
2. By reason of the matters alleged in paragraph 31 of the ASOC, each bet placed by the Plaintiff or any Group Member pursuant to a Bet Contract which resulted in Entain making a payment to the Plaintiff or Group Member in respect of winnings (**Winning Bet Contract**) is void for illegality or alternatively unenforceable for illegality.
3. To the extent that Entain has paid the Plaintiff or any Group Member any amount as winnings pursuant to a Winning Bet Contract, then the Plaintiff or Group Member has been enriched by that amount less the amount staked by the Plaintiff or Group Member (**Winnings**), at the expense of Entain.
4. The payment of Winnings by Entain was on the basis that the Winning Bet Contract was valid and enforceable.
5. By reason of the matters alleged above in paragraphs ~~432~~ and ~~454~~, Winnings were paid on a basis which has failed.
6. In the premises:
 - (a) the retention of the Winnings by the Plaintiff and Group Members is unjust;
 - (b) the Winnings are moneys had and received to the use of Entain; and
 - (c) the Plaintiff and any Group Member who has received Winnings is obliged to make restitution of those amounts to Entain.

Dated: ~~20 February~~ 13 April 2026

Nicholas De Young

Brad Holmes



King & Wood Mallesons
Solicitors for the Defendant