

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



No. S ECI

Case: S ECI 2023 04323

Filed on: 15/09/2023 03:29 PM

B E T W E E N

PHILLIP BRENT KRAKOUER

Plaintiff

-and-

AUSTRALIAN FOOTBALL LEAGUE (ACN 004 155 211)

Defendant

WRIT

Date of Document: 15 September 2023

Solicitors Code: 113394

Filed on behalf of: The Plaintiff

Prepared by: Margalit Injury Lawyers

Telephone: (03) 9133 0288

Suite 4, 107-111 High Street

Ref: 22371

Prahran VIC 3181

Email: info@margalitlawyers.com.au

TO THE DEFENDANT

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

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

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

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

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

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

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

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

FILED 15 September 2023

Prothonotary

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

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

No. S ECI

B E T W E E N

PHILLIP BRENT KRAKOUER

Plaintiff

-and-

AUSTRALIAN FOOTBALL LEAGUE (ACN 004 155 211)

Defendant

GENERAL INDORSEMENT

Date of Document: 15 September 2023

Solicitors Code: 113394

Filed on behalf of: The Plaintiff

Prepared by: Margalit Injury Lawyers

Telephone: (03) 9133 0288

Suite 4, 107-111 High Street

Ref: 22371

Prahran VIC 3181

Email: info@margalitlawyers.com.au

I. Preliminary

1. This proceeding is commenced as a representative proceeding pursuant to section 33C of the *Supreme Court Act 1986* (Vic).

II. The Group

2. The Plaintiff brings this proceeding on behalf of himself all other persons who:
 - a. are Aboriginal and Torres Strait Islander people and/or people of colour; and
 - b. who between 1975-2022 were football players, or employed or engaged by the Defendant as umpires, officials or other staff; and
 - c. who experienced racism, racial vilification, racial discrimination, racial abuse and/or victimisation in the course of their involvement in playing, or employment or engagement by the Defendant in the VFL and/or AFL (**the engagement**).(**group members**)

3. As at the time of the commencement of this proceeding there are 7 or more group members.

III. The Defendant

4. The Defendant is a body corporate which was incorporated in 1929 and then known as the 'Victorian Football League', changing its name on 24 January 1990 to be known as the 'Australian Football League'.
5. The Defendant from 1975 pursuant to its constitution as amended from time to time:
 - a. conducted the premier football league in Victoria and thereafter a national football competition;
 - b. was governed by a Commission;
 - c. had the power to determine the terms and conditions upon which persons may play football for clubs and which football matches may be played by clubs;
 - d. had the power to make, vary and administer rules, regulations and laws relating to Australian Rules Football (**the Rules**);
 - e. had the power to enforce the Rules including to impose sanctions for breach of the Rules;
 - f. had the power to grant licences to legal entities to field a team (**VFL and AFL Clubs**) in the VFL and later AFL and did so from time to time to affiliated Clubs including:
 - i. Adelaide Football Club Ltd.
 - ii. Brisbane Bears-Fitzroy Legal Club Ltd.
 - iii. Carlton Football Club Ltd.
 - iv. Collingwood Football Club Ltd.
 - v. Essendon Football Club Ltd.
 - vi. Footscray Football Club Ltd.
 - vii. Fremantle Football Club Ltd.
 - viii. Geelong Football Club Ltd.
 - ix. GCFC Ltd.
 - x. Western Sydney Football Club Ltd (trading as Greater Western Sydney Football Club).
 - xi. Hawthorn Football Club Ltd.
 - xii. Melbourne Football Club Ltd.
 - xiii. North Melbourne Football Club Ltd.
 - xiv. Port Adelaide Football Club Ltd.
 - xv. Richmond Football Club Ltd.
 - xvi. Sydney Swans Ltd.

- xvii. St Kilda Saints Football Club Ltd.
- xviii. India Pacific Ltd (trading as West Coast Eagles).

IV. The Plaintiff

- 6. From 1982 until 1991 the Plaintiff was registered with the Defendant as a professional football player listed with the North Melbourne Football Club Ltd and later the Footscray Football Club Ltd (**period of registration**).
- 7. At various times during the period of registration the Plaintiff experienced racism, racial vilification, racial discrimination, racial abuse and victimisation (**the impugned conduct**) in the course of and associated with his activities as a professional football player registered with the Defendant.

V. Negligence of the Defendant

- 8. The Plaintiff suffered injury, loss and damage as a result of the acts and omissions of the employees, officers and/or agents of the Defendant during the course of his career as a footballer with the Defendant leagues as a consequence of the impugned conduct.

Knowledge

- 9. At all relevant times it was reasonably foreseeable to the Defendant that the Plaintiff and other group members who were subject to the impugned conduct would suffer injury loss and damage as a consequence of the impugned conduct towards them.
- 10. At all relevant times the Defendant knew or ought to have known of:
 - a. the immediate and long-term adverse consequences of experiencing the impugned conduct; and
 - b. the need to take steps to protect the Plaintiff and group members from the adverse consequences of the impugned conduct.
- 11. From time to time as societal standards around inclusion and cultural safety evolved and improved, the Defendant's knowledge and understanding of the matters in paragraph 10 above ought also to have evolved and improved.

Duty

- 12. The Defendant owed to the Plaintiff and group members a duty:
 - a. to provide for them a safe (including a culturally safe) environment during the course of their engagement;
 - b. to take reasonable steps to inform itself of the risks and adverse consequences of the impugned conduct upon them;
 - c. to protect them from the impugned conduct during the course of their engagement;

- d. to take steps to prevent impugned conduct against them and other Aboriginal and Torres Strait Islander people and people of colour during the course of their engagement;
- e. to implement measures to minimise harm to the Plaintiff and other group members caused by experiencing the impugned conduct during the course of their engagement;
- f. to impose sanctions and penalties against its employees, officers and/or agents including players, officials, umpires and others for participating in impugned conduct against the Plaintiff and group members during their engagement;
- g. to take action and impose sanctions and penalties against Clubs, cheer squads and spectators for participating in the impugned conduct against the Plaintiff and group members during their engagement.

Breach

13. The Defendant breached its duty to the Plaintiff and group members.

PARTICULARS OF NEGLIGENCE

The Defendant breached its duty by:

- i. failing to implement and/or enforce rules and policies so as to prohibit the impugned conduct;
- ii. permitting the impugned conduct to occur without punishment, penalty or censure;
- iii. failing to establish and enforce policies that would cause appropriate censure to persons under their control including registered players, club officials and/or employees, Clubs, cheer squads or spectators who engaged in the impugned conduct;
- iv. failing to provide for them a safe (including a culturally safe) environment during the course of the engagement;
- v. failing to require and/or ensure that persons under their control including registered players, club officials and/or employees, Clubs, cheer squads and spectators acted compatibly with and did not act in breach of the *Racial Discrimination Act 1975* by engaging in unlawful discrimination or hate speech;
- vi. failing to provide any or any sufficient education to Clubs, registered players, club officials, Clubs, cheer squads and spectators about the adverse impact of the impugned conduct.

- vii. upon becoming aware of the impugned conduct towards the plaintiff and/or group members failing to take any or any adequate steps to prevent its recurrence.

Harm

14. As a result of the Defendant's failure, the Plaintiff has suffered injury, loss and damage.

PARTICULARS OF INJURY

Long term emotional harm and distress leading to persisting psychiatric illness.

PARTICULARS OF LOSS AND DAMAGE

The Plaintiff is 63 years of age having been born on 15 January 1960.

The Plaintiff has incurred medical and like expenses, full particulars of which will be provided prior to trial.

The Plaintiff's employment capacity has been impaired by reason of the injury suffered as above.

Full particulars of the Plaintiff's loss of earnings and loss of earning capacity will be provided prior to trial.

VI. Common Questions of Fact and Law

15. The questions of fact and law common to the Plaintiff and each of the group members are:
- a. What duty did the Defendant owe to the Plaintiff and group members to protect them from the impugned conduct and the consequences thereof;
 - b. What the Defendant ought reasonably to have done from time to time in respect of the impugned conduct occurring in and associated with the Competition conducted by the Defendant including impugned conduct by registered players, club officials and employees, Clubs, cheer squads and spectators;
 - c. the extent to which the evolution in societal standards around racism, discrimination, inclusion and cultural safety altered the objective reasonableness of the Defendant's conduct from time to time;
 - d. What were the rules, policies and procedures of the Defendant from time to time in relation to the impugned conduct;
 - e. the extent to which the Defendant had and/or exercised power to ensure that registered players, club officials and employees, Clubs, cheer squads and spectators complied with rules, policies and procedures capable of reducing or eliminating the impugned conduct;

- f. Whether the Defendant owed a common law duty of care to the Plaintiff and group members in relation to the impugned conduct;
- g. Whether the Defendant breached the duty it owed to the Plaintiff and group members;
- h. The principles of measuring and identifying compensable losses.

VII. Relief

16. The Plaintiff claims on his own behalf and on behalf of the group members:

- a. Damages;
- b. Such further other orders as to the court deems fit;
- c. An undertaking by the Defendant to implement and enforce to the extent it is possible procedures to avoid and/or minimise the effect of the impugned conduct upon players in the future.

T P TOBIN SC

J E TAYLOR

Margalit Lawyers

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MARGALIT INJURY LAWYERS

Solicitors for the Plaintiff

1. Place of trial – Melbourne
2. Mode of Trial – Judge and Jury
3. This Writ was filed for the Plaintiff by – Margalit Injury Lawyers of Suite 4, 107-111 High Street, Prahran VIC 3181
4. The address of the Plaintiff is – 247 Mitcham Road, Mitcham VIC 3132
5. The address for service of the Plaintiff is – C/- Margalit Injury Lawyers, Suite 4, 107-111 High Street, Prahran VIC 3181
6. The email address for service of the Plaintiff is – info@margalitlawyers.com.au
7. The address of the Defendant is – AFL House, 140 Harbour Esplanade, Docklands VIC 3008