



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

Case: S ECI 2023 00969

Filed on: 06/12/2023 02:59 PM

No. S ECI 2023 00969

B E T W E E N:

**JARAD MAXWELL ROOKE**

Plaintiff

- and -

**AUSTRALIAN FOOTBALL LEAGUE (ACN 004 155 211)**

Defendant

**STATEMENT OF CLAIM**

---

Date of Document:	6 December 2023	Solicitors Code:	113394
Filed on behalf of:	The Plaintiff	Telephone:	(03) 9133 0288
Prepared by:	Margalit Injury Lawyers Suite 4, 107-111 High Street Prahran VIC 313	Ref:	21721
		Email:	info@margalitlawyers.com.au

---

**PART I - THE PARTIES**

**The Defendant**

1. From 1985 to in or about 1989, the Defendant was known as the Victorian Football League.
2. From in or about 1990 to 2023, the Defendant was and is known as the Australian Football League ('AFL').
3. From 1985 to 2023, the AFL has been, and is, a corporate entity limited by guarantee, including under the *Corporations Act 2001* (Cth).
4. As a corporate entity, the AFL is capable of being sued in this proceeding in its own name.

5. During the period 1 January 1985 to 14 March 2023 (**'the period'**), the AFL:
  - (a) operated under a written constitution as amended from time to time (**'the constitution'**);
  - (b) was governed by the board of Commissioners of the AFL (**'AFL Commission'**);
  - (c) conducted a national professional elite Australian football competition commonly known as the 'Australian Football League' or the 'AFL competition' under the constitution (**'AFL Competition'**);
  - (d) granted licences to Clubs, also known as AFL Clubs, as listed in paragraph 5(f) of the Endorsement to Claim, to field teams to compete in the AFL Competition (**'the Clubs'**);
  - (e) determined the terms and conditions upon which the Clubs may participate in the AFL Competition;
  - (f) determined the terms and conditions upon which males, including the Plaintiff, may participate as professional players in the AFL Competition (**'AFL players'**);
  - (g) determined the terms and conditions upon which football matches between Clubs may be played as part of the AFL Competition;
  - (h) pursuant to the constitution, determined and administered the rules, regulations and by-laws of, and in connection with, the operation of the AFL Competition, those rules being binding on AFL players and Clubs taking part in the AFL Competition; and
  - (i) had the power to enforce the rules, including to impose sanctions for breach of the rules.
  
6. Further, since in or about 1996, the AFL has:
  - (a) operated the Victorian Football League Competition (**'VFL Competition'**) as its second-tier Australian football competition;
  - (b) permitted the Clubs to place the AFL players in the VFL Competition from time to time when those players were not playing matches in the AFL Competition;
  - (c) operated the VFL Competition in part to enable AFL players to play when those players were not playing matches in the AFL Competition;

- (d) determined the terms and conditions upon which the AFL players, including the Plaintiff, may participate in the VFL Competition from time to time when those players were not playing in AFL Competition matches;
  - (e) determined and administered the rules, regulations and by-laws of, and in connection with, the operation of the VFL Competition; and
  - (f) had the power to enforce the VFL rules, including to impose sanctions for breach of the rules.
7. Further, during the period, the AFL was responsible for and/or had the power to:
- (a) make and enforce rules with respect to the management of injuries to the AFL players in connection with the operation of the AFL Competition and the VFL Competition, including during matches (**'matches'**); and practice and pre-season matches and training (**'training'**); and, specifically,
  - (b) make and enforce rules with respect to the management of the AFL players who suffered head knocks and concussions during matches and training.

### **The Plaintiff**

8. The Plaintiff was born on 19 December 1981 and is known as Max Rooke (**'Rooke'**).
9. In the period from 2001 to in or about October 2010, Rooke:
- (a) was registered with the AFL as a professional player listed with the Geelong Football Club Ltd;
  - (b) entered into annual contracts of employment known as tripartite Standard Playing Contracts (**'SPCs'**) with the AFL and the Geelong Football Club to play in the AFL Competition, and from time to time the VFL competition;
  - (c) played 135 matches in the AFL Competition as a professional player, and from time to time played in the VFL Competition when not playing matches in the AFL Competition; and
  - (d) attended and participated in training for the purposes of the AFL Competition, (**'Rooke's AFL career'**).

**The group members**

10. Rooke brings this proceeding in his own right and as a representative proceeding under Part 4A of the *Supreme Court Act 1986* (Vic).
11. In so far as the claim is brought as a representative proceeding, Rooke brings this proceeding on behalf of all persons who:
  - (a) played in the AFL Competition during the period; and
  - (b) during the course of matches or training sustained head knocks; and
  - (c) after sustaining head knocks, suffered from temporary loss of normal brain function or symptoms consistent with temporary loss of normal brain function, known as concussion (**'concussion'**); and
  - (d) suffered an acquired brain injury after sustaining concussion/s. (**'the injured players'**).
12. Further, Rooke brings this proceeding on behalf of and for the benefit of the estates of persons within the meaning of section 29(1) of the *Administration and Probate Act 1958* (Vic) who would have come within the definition of 'injured players' and have died (**'the deceased players'**).
13. Further, Rooke brings this proceeding on behalf of persons who were dependants of the deceased players at the time of their death within the meaning of Part III of the *Wrongs Act 1958* (Vic) (**'the Wrongs Act'**).
14. Further, Rooke brings this proceeding on behalf of persons who:
  - (a) were in a close relationship with the injured players or the deceased players within the meaning of section 73 of the *Wrongs Act*; and
  - (b) have suffered pure mental harm by way of a recognised psychiatric illness because of the injury of the injured players or death of the deceased players.
15. Each of the persons identified in paragraphs 11 to 14 above is a group member within the meaning of section 33A of the *Supreme Court Act 1986* (Vic) (**'group members'**) and at the commencement of this proceeding there are more than

seven group members who make the claims set out in this Statement of Claim against the AFL.

## **PART II – DUTY OF CARE**

### **Foreseeability and nature of the harm**

16. During the period, it was reasonably foreseeable to a person in the position of the AFL that:
  - (a) there was a risk of players suffering head knocks and concussions during matches and training;
  - (b) the risk of personal injury identified immediately above included a risk of long-term or permanent injury or death;
  - (c) despite sustaining a head injury or concussion injury, players may be highly motivated to continue to play in matches or continue to train for matches;
  - (d) playing in matches or continuing to train for matches while suffering with a head injury or concussion injury may have caused one or more additional injuries, or aggravated, accelerated or exacerbated existing injuries; and
  - (e) sustaining head injuries and in particular multiple head injuries over the course of an AFL player's AFL career may cause long-term or permanent injury, or aggravate, accelerate or exacerbate existing injuries.
  
17. In the premises of the preceding paragraph, during the period, the risk of players suffering head injuries during matches or training, including concussion injuries, was reasonably foreseeable to a person in the position of the AFL.

### **Power and control by the AFL**

18. Including by reason of the matters set out in paragraphs 5 to 7 above, in the period the AFL was able to exercise AFL Competition and VFL Competition (collectively hereafter, '**the AFL Competition**') wide control over the setting of rules, protocols and procedures for:
  - (a) medical assessment, treatment and monitoring of AFL players;

- (b) the removal of injured AFL players from matches and training;
  - (c) the return of injured AFL players to matches and training,
- and enforcement of the same with the Clubs and the AFL players.

19. Further, including by reason of the terms set out in the SPCs, while participating in the AFL Competition during the period, the AFL players were required to comply with the AFL Rules (these included the AFL Regulations, AFL Player Rules, the Code of Conduct, the Memorandum and Articles of Association of the AFL and any determination or resolutions of the AFL Commission passed from time to time).
20. In the premises of the two preceding paragraphs, during the period the AFL was able to exercise control over the risk to the AFL players of suffering head injury and concussion injury in matches or during training and the consequences thereof.

### **Vulnerability of the AFL players**

21. During the period, the AFL players were vulnerable to acts or omissions of the AFL in relation to the risk of head injury and concussion injury during matches or training.

### **PARTICULARS**

In addition to the control of the AFL set out above in paragraphs 18 to 20, to the knowledge of the AFL, the AFL players:

- (a) were mostly young men under the age of 30;
- (b) were likely highly motivated to participate in matches and training;
- (c) were encouraged by the AFL and the Clubs to succeed;
- (d) were rewarded financially by the AFL for excelling in the AFL Competition;
- (e) had to perform physically and succeed in matches to retain their position in the team fielded by Clubs in matches and in the AFL Competition;

- (f) were participating in a physical, body contact, and elite professional sporting competition;
- (g) had, or likely had, no or limited medical expertise relevant to the risk of head injury or concussion injury;
- (h) were dependent on or through the AFL to advise them on the risk of head injury and concussion injury;
- (i) were dependent on or through the AFL, on head injury and concussion injury, whether they were fit to continue playing or training;
- (j) were dependent on the AFL, including through the Clubs and medical officers, on sustaining head injury or concussion injury to advise them on when and whether they were fit to return to matches or training;
- (k) were likely to be highly motivated to continue to play or train or return to matches or training as soon as possible;
- (l) were unlikely to challenge a determination that they were fit to continue to play in matches or training;
- (m) were unlikely to challenge a determination that they were fit to return to matches or training.

### **The reliance by the AFL players on the AFL**

22. During the period, the AFL players had no personal ability to, and instead relied on the AFL in its operation of the AFL Competition to:
- (a) have and enforce rules, protocols and systems on the management of head injuries and concussion injuries suffered by AFL players during matches and training;
  - (b) have and enforce rules, protocols and systems on the removal of players who have sustained head injuries or concussion injuries from matches and training;
  - (c) have and enforce rules, protocols and systems regarding medical assessment of players who have sustained head injuries or concussion injuries during matches and training; and

- (d) have and enforce rules, protocols and systems for the return of players to matches and training after sustaining head injuries or concussion injuries when and if they were fit to return to matches and training.

### **The assumption of responsibility by the AFL over the AFL players**

23. In the premises of paragraphs 5 to 7 and 16 to 22 above, in its operation of the AFL Competition, the AFL assumed responsibility for:
- (a) having and enforcing rules, protocols and systems for the management of head injuries and concussion injuries suffered by AFL players during matches and training;
  - (b) having and enforcing rules, protocols and systems on the removal of AFL players who have suffered head injuries and concussion injuries from matches and training;
  - (c) having and enforcing rules, protocols and systems on the medical assessment of players who have sustained head injuries or concussion injuries during matches and training;
  - (d) having and enforcing medical officers to assess players who had sustained head injuries or concussion injuries during matches and training;
  - (e) having and enforcing rules, protocols and systems for the return of players to matches and training after sustaining head injuries or concussion injuries; and
  - (f) having medical officers to assess players' head injuries or concussion injuries and clear them to return to matches or training when and if the players are medically fit to do so.

### **Relationship between the AFL and the AFL players**

24. During the period, by virtue of:
- (a) the matters set out in paragraphs 5 to 7, and 16 to 23 above; and
  - (b) the contractual relationship between the AFL players and the AFL under the SPCs,



the AFL and the AFL players were in a position analogous to employer and employee.

### **Duty of care**

25. During the period, the AFL owed the AFL players a duty to take reasonable care for their safety and to avoid exposing them to unnecessary risk of long-term and/or permanent personal injury or death as a result of head injury or concussion injury during matches and training.

### **PARTICULARS**

In relation to the existence of the duty of care, Rooke relies on the matters set out at paragraphs 5 to 7 and 16 to 24 above, and says further that, during the period:

- (a) the duty of care applied to AFL players, being an ascertainable and limited class of persons;
  - (b) the AFL conducted a professional sporting competition which relied on the AFL players participating in body contact sport and thereby being exposed to the risk of personal injury, including the risk of head injury and concussion injury to generate its operating revenue;
  - (c) as the operators of a national professional football competition, the AFL was in the best position to inform itself regarding the risk of permanent injury or death to AFL players arising from their participation in the AFL Competition, and to make and enforce AFL Competition wide rules to take reasonable steps to protect against same; and
  - (d) the imposition of the said duty of care does not undermine the coherence of the law and, to the contrary, is consistent with the OHS legislation and OHS regulations referred to below.
26. Further and in addition to the preceding paragraph, during the period, the AFL had an obligation to provide the AFL players with a safe system of work during

matches and training, analogous to the duty owed by an employer to an employee.

27. Further, and in addition to the preceding two paragraphs, the duty of care owed by the AFL to the AFL players was a personal or non-delegable duty by the AFL to ensure that reasonable care was taken to avoid the risk of personal injury and in particular head injury or concussion injury to the AFL players in connection with their participation in the AFL Competition during matches and training.

### **PART III – CONCUSSION MANAGEMENT DUTY OF CARE**

#### **Foreseeability and nature of the risk of concussion**

28. During the period, the AFL knew, or it was reasonably foreseeable to a person in the position of the AFL 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 an:
    - i. acquired brain injury (**ABI**); or
    - ii. aggravation, acceleration or exacerbation of an ABI; 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 an ABI; or
    - ii. aggravating, accelerating or exacerbating an ABI,

(‘concussion management risk of harm’).

## PARTICULARS

Rooke relies on the following:

- (i) Since 1906, there has been medical concern raised that concussion mismanagement is a risk to player health and safety in American football: Edward H Nichols and Homer B Smith, ‘The Physical Aspect of American Football’ (1906) *Boston Medical and Surgical Journal* 1, 3 cited in Emily Harrison, ‘The First Concussion Crisis: Head Injury and Evidence in Early American Football’ (2014) *Journal of Public Health* 104(5).
- (ii) Since 1927, it has been known that concussion is capable of causing injury without complete resolution, with secondary degenerative changes occurring: M Osnato and V Giliberti, “Post concussion Neurosis – Traumatic Encephalitis” (1927) 18 *Archives of Neurology & Psychiatry* 181.
- (iii) Since 1976, it has been known that it would be reasonable to advise patients to cease collision sports if they have suffered two or more episodes of head injury associated with loss of consciousness or amnesia: ID Adams “Brain Damage in Sport” (1976) 307 *The Lancet* 585.
- (iv) Since 1980, it has been recommended or proposed that certain contact sports should mandate four weeks of ineligibility after a knockout in order to avoid cumulative effects of injury: KW Lindsay et al, “Serious Head Injury in Sport” (1980) 281 *British Medical Journal* 789, 790, 791.
- (v) Since March 1983, it has been known that that head injuries create special problems in sport; concussions are the most common type of head injury in sport; head knocks and concussions can be serious and even fatal; head knocks and concussions require defined policies for coaches and

administrators; concussions may give rise to clots forming in the brain; a second concussion within one to two weeks of the first concussion may damage the brain out of all proportion to the violence of the injury; the effects of concussions may last up to three weeks; most young people return to work around five days after a concussion, but starting work may worsen the symptoms and repeated concussions have more effect each time, with long term effects being common; with five or six concussions in cases causing noticeable problems to athletes, including a change of personality, concussion injuries always require medical assessment and often x-rays and a period of observation or hospitalisation; concussed players may be uncooperative and require management; a second concussion within a short period of time of the first concussion may produce serious reaction out of all proportion to the severity of the head knock; and that there will be circumstances where, after a number of head knocks, a person will no longer be suitable to participate in the sport: Wrightson P, Gronwall D. Concussion and sport: a guide for coaches and administrators. *Patient Management* 1983 (March): 79-82.

- (vi) In or around 1983, the AFL, through its AFL Medical Officers Association, commenced monitoring and investigating extensively the risks of concussions in the League: *AFL Medical Officers Report to National Health and Medical Research Council on Head and Neck Injuries in Football* under cover of letter dated 26 November 1993.
- (vii) Since around 1983 to 1985, the AFL commenced researching the issue of concussion in football: Australian Football League (2012). *AFL Responsible Approach to Concussion in the AFL Information Paper and the AFL Medical Officers Report to the National Health and Medical Research Council on Head and Neck Injuries in Football* under cover of letter dated 26 November 1993.

- (viii) Since at least 1992, it has been known that brain injuries are one of the most catastrophic athletic injuries and that, once a player has incurred a concussion, there is a heightened risk of a second or further concussion: RC Cantu “Cerebral Concussion in Sport: Management and Prevention” (1992) 14(1) *Sports Medicine* 64, 70.
- (ix) From around 1992, the AFL commenced an annual injury surveillance system. The first AFL Injury Surveillance Report published in 1993 listed concussion as an injury.
- (x) Since at least 1993, it has been known that minor head trauma may result in long term persistent clinical symptoms and neurological, cognitive, and psychological sequelae with a potential risk of the effect of cumulative head injuries: JE Wilberger, “Minor Head Injuries in American Football Prevention of Long-Term Sequelae” (1993) 15(5) *Sports Medicine* 338, 338-339.
- (xi) In or about 1993 and 1994, the National Health and Medical Research Council (**NHMRC**) convened the “Head and Neck Injuries in Football” Panel, which included an AFL representative on the Panel, and published a report, including noting evidence of long-term effects from concussion, and identifying the need for sport to take proactive steps to mitigate potential harm, including through rest after concussions and a graduated return to training and matches.
- (xii) Since at least 1995, it has been known that, when a concussion has occurred, the brain is exposed to a “Second Impact Syndrome” after a further head knock, including a minor head knock, which exposed a player to severe injury, including the risk of coma, and requiring guidelines regarding return to play and education about the risk of playing while suffering the effects of a concussion: Cantu, R, Voy, R, *Case Report – Second Impact Syndrome – A Risk in Any Contact Sport* (1995) *The Physician and Sportsmedicine* Vol 23, No 6.

- (xiii) Since at least 1998, it has been known that there is a potential genetic susceptibility to CTE caused by brain injury in sports, and that a milder form of CTE could occur in sports associated with repetitive blows to the head: B Jordan, 'Genetic Susceptibility to Brain Injury in Sports: A role for genetic testing in athletes' (1998) 26(2) *The Physician and Sports Medicine* 25.
- (xiv) In 2001, the First International Symposium on Concussion in Sport was held in Vienna (later known as the Concussion in Sport Group – 'CISG'), and published the 'Summary and Agreement Statement of the First International Conference on Concussion in Sport' (known as the Vienna consensus) with the definition "*Sports concussion is defined as a complex pathophysiological process affecting the brain, induced by traumatic biomechanical forces*".
- (xv) In 2001, there was published research informing physicians of the "*important public health concern*" of "*chronic traumatic brain injury*" and the "*long-term neurologic consequences of repetitive concussive and sub-concussive blows to the brain*" as found primarily in boxing but which can "*be anticipated in other contact sports such as soccer, football, ice hockey, and the martial arts*": MH Rabadi and BD Jordan, "The Cumulative Effect of Concussion in Sports" (2001) 11 *Clin J Sport Med* 194, 194.
- (xvi) In 2004 the Second International Symposium on Concussion in Sport was held and released an updated consensus statement.
- (xvii) From at least 2005, it was known that, with respect to retired National Football League ('NFL') players, that those who had three or more concussions had a fivefold prevalence of mild cognitive impairment compared to NFL retirees with no history of concussions: Kevin M Guskiewicz *et al*, 'Association between Recurrent Concussion and Late-Life Cognitive Impairment in Retired Professional Football Players' (2005) 57 *Neurosurgery* 719, 722.
- (xviii) The 2007 AFL Annual Report noted concerns about concussive injuries at the elite level of sport.

- (xix) In 2008, the Third International Conference on Concussion in Sport was held and released a consensus statement.
- (xx) In 2008, the AFL issued its first iteration of concussion guidelines, which were amended from time to time until 2023.
- (xxi) In 2010, the AFL established an internal concussion working group.

Rooke may provide further particulars following discovery.

Further, the state of medical knowledge from time to time will be subject to expert evidence.

- 29. Further, by at least November 1993, the AFL had actual knowledge of the concussion management risk of harm.

#### **PARTICULARS**

Rooke relies on the AFL Medical Officers' Report to the NHMRC on Head and Neck Injuries in Football under cover of letter dated 26 November 1993, the substance of which is that a player may only return to training when his concussion symptoms have resolved. The training was to be monitored and non-contact, with a graduated return to full training if remaining symptom-free, closely observing any subtle changes caused by the concussion before returning to matches.

Rooke may provide further particulars following discovery.

#### **Reasonable precautions against the concussion management risk of harm**

- 30. During the period, including by creating and enforcing relevant rules, protocols, guidelines and procedures applicable to players and Clubs, the AFL had available to it the following precautions against the concussion management risk of harm, including within the meaning of section 48(1) of the *Wrongs Act*:

- (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’).**

## **PARTICULARS**

Particulars of the reasonable precautions will be the subject of expert evidence.



**The probability that harm would occur if the reasonable precautions were not taken**

31. In the premises of paragraph 28 above, there was a real risk of harm to AFL players if the reasonable precautions to the concussion management risk of harm were not taken by the AFL, including within the meaning of section 48(2)(a) of the *Wrongs Act*.

**The likely seriousness of the concussion management risk**

32. In the premises of paragraph 28 above, while playing in the AFL Competition, the AFL players were exposed to serious injury or death as a result of the concussion management risk of harm, including within the meaning of section 48(2)(b) of the *Wrongs Act*.

**The burden of taking precautions to avoid the concussion management risk of harm**

33. Any financial costs or logistical burden on the AFL in taking the reasonable precautions in the AFL competition, including within the meaning of section 48(2)(c) of the *Wrongs Act*, were not disproportionate to avoiding the concussion management risk of harm, having regard to the likely effect of the reasonable precautions in reducing the probability of AFL players:
- (a) participating in matches or training unless and until the player had recovered from the concussion;
  - (b) suffering ABIs;
  - (c) suffering a further head knock before they had recovered from the concussion; or
  - (d) suffering a further injury or aggravating, accelerating or exacerbating an existing injury.
34. Further, any financial cost or logistical burden on the AFL in taking the reasonable precautions were significantly outweighed by the potential or likely

gravity of harm, including by way of long-term or permanent injury or death, suffered by the player if the reasonable precautions were not taken by the AFL.

### **Social utility and the concussion management risks of harm**

35. During the period, there existed positive social utility, including within the meaning of section 48(2)(d) of the *Wrongs Act*, in employing the reasonable precautions as they were:
- (a) to promote and preserve health and safety of the AFL players;
  - (b) to promote the importance of health and safety of the AFL players to the community;
  - (c) promote health and safety in the playing of Australian football; and
  - (d) to raise awareness in the community of the risk of injury from head knocks and concussions.
36. Further, any social utility in not employing the reasonable precautions was significantly outweighed by the social detriment in exposing the AFL players to the risk of injury.

### **Concussion management duty of care**

37. In the premises of paragraphs 28 to 36 above, and within the meaning of section 48(1) of the *Wrongs Act*, a reasonable person in the position of the AFL would have taken the reasonable precautions.
38. In the premises of paragraphs 5 to 7 and 16 to 37 above, during the period the AFL owed the AFL players a duty to take reasonable care for their safety in relation to concussion management and to avoid exposing them to unnecessary risk of personal injury arising from concussion.
39. In the premises of paragraphs 5 to 7 and 16 to 37 above, the applicable standard of care required the AFL to take reasonable steps to:
- (a) take the reasonable precautions; and/or

- (b) ensure that the reasonable precautions were taken.  
(‘the concussion management duty of care’).

## **PART IV – BREACH OF THE CONCUSSION MANAGEMENT DUTY OF CARE**

### **Failure by the AFL to implement the reasonable precautions**

- 40. During the period, the AFL failed to take reasonable care to implement the reasonable precautions, including by failing to create and enforce relevant AFL Competition wide rules, protocols, guidelines and procedures applicable to AFL players and Clubs, so as to:
  - (a) have 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 in players; and
  - (b) where symptoms of concussion were suspected or identified, direct that the player immediately withdraw from matches or training, as the case may be;
  - (c) where symptoms of concussion were suspected or identified, have a mandatory period of no training or matches for a minimum of 12 days;
  - (d) after the mandatory period of no training or matches, require the player to be assessed by a medical officer to determine if the player is fit to resume play or training;
  - (e) once being assessed as fit to resume play or training, direct that the player be returned to training in a graduated manner 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 permit the player to return to matches while monitoring the player for any subtle changes caused by the concussion;
  - (g) if a player was assessed as not suitable to return to matches or training because of their concussion(s), requiring that player retire from the AFL Competition;
  - (h) assess the risk of head knocks and concussions to players while playing in the AFL Competition;

- (i) study and monitor the effect of head knocks and concussions on players, including over time; and
- (j) advise, warn and educate the AFL players on the risks of head knocks, signs and symptoms of concussions and the concussion risk of harm.

### **Breach of duty to the AFL players**

41. As a result of the concussion management failures and the failures to take the reasonable precautions, the AFL breached the duty of care that it owed to the AFL players and was negligent.

## **PART V – BREACH OF STATUTORY DUTIES**

### **Application of the Occupational Health and Safety legislation**

42. Further, or in the alternative, the AFL players were ‘employees’ of the AFL within the extended meaning of ‘employee’ under:
- (a) section 21(3) of the *Occupational Health and Safety Act 1985* (Vic); and
  - (b) section 21(3) of the *Occupational Health and Safety Act 2004* (Vic),
- (‘**OHS Legislation**’).
43. Pursuant to the OHS legislation, the AFL was bound by the duties of an employer to, so far as is reasonably practicable, provide and maintain a working environment to the AFL players in matches and training that was safe and without risks to health in relation to matters over which the AFL had control, including, relevantly, the concussion management risk of injury.

### **Statutory duties owed by the AFL**

44. In the premises of paragraphs 42 and 43, in the period from 1 July 1999 to 14 March 2023 (‘**the OHS period**’), each of the:

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

(jointly, **'the OHS regulations'**) conferred upon the AFL players a private right of action for breach of statutory duty against the AFL under the OHS regulations regarding the concussion management risk of injury.

45. During the OHS period, when sustaining the 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 (**'the 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.
46. Pursuant to the 1999 Regulations, the AFL owed the AFL players statutory duties to:
- (a) ensure that it identify any task to be undertaken by the player that involved hazardous manual handling in accordance with Regulation 13 of the 1999 Regulations;

- (b) undertake an assessment of the risk of musculoskeletal disorder, which disorder included head knocks, affecting the AFL players as a result of hazardous manual handling in accordance with Regulation 14 of the 1999 Regulations; and
  - (c) ensure that any risk of musculoskeletal disorder affecting the AFL players as a result of hazardous manual handling is eliminated, or if it was not practicable to eliminate the risk, was reduced so far as is practicable in accordance with Regulation 15 of the 1999 Regulations.
47. Further, or alternatively, pursuant to the 2007 Regulations and the 2017 Regulations, the AFL owed the AFL players statutory duties to:
- (a) so far as was reasonably practicable, identify any task undertaken, or to be undertaken, by the AFL players involving hazardous manual handling in accordance with Regulation 3.1.1 of the 2007 Regulations and Regulation 26 of the 2017 Regulations;
  - (b) ensure that any risk of musculoskeletal disorder affecting the AFL players as a result of hazardous manual handling was eliminated so far as reasonably practicable or if it was not practicable to eliminate the risk, ensure that the risk was reduced so far as is practicable, or if it was not practicable to reduce the risk, control the risk by use of information, instruction or training in accordance with Regulation 3.1.2 of the 2007 Regulations and Regulation 27 of the 2017 Regulations; and
  - (c) ensure that any measures implemented to control risks in relation to musculoskeletal disorders were reviewed and, if necessary, revised in accordance with Regulation 3.1.3 of the 2007 Regulations and Regulation 28 of the 2017 Regulations.

### **The AFL's breach of statutory duty**

48. In the premises of paragraphs 42 to 47 above, and in failing to take the reasonable precautions, during the OHS period, in breach of the statutory duties owed to the AFL players, the AFL failed to:

- (a) identify the risk of hazardous manual handling to players during matches and training in breach of Regulation 13 of the 1999 Regulations, Regulation 3.1.1 of the 2007 Regulations and Regulation 26 of the 2017 Regulations;
  - (b) undertake an assessment of the risk of musculoskeletal disorder affecting the AFL players as a result of hazardous manual handling in accordance with Regulation 14 of the 1999 Regulations, Regulation 3.1.2 of the 2007 Regulations and Regulation 27 of the 2017 Regulations; and
  - (c) eliminate, reduce or control the risk of hazardous manual handling in accordance with Regulation 15 of the 1999 Regulations, Regulation 3.1.3 of the 2007 Regulations and Regulation 28 of the 2017 Regulations.
49. In the premises of the preceding paragraph, the AFL breached its statutory duties owed to the AFL players.

#### **PART VI – ROOKE’S CLAIM**

50. During Rooke’s AFL career, while playing in matches, Rooke sustained the following incidents where he sustained a significant head knock and/or suffered from, and/or showed symptoms consistent with, concussions, and/or suffered from loss of consciousness (**‘Rooke’s head knocks and concussions’**):
- (a) 30 March 2002 – VFL match;
  - (b) 4 May 2003, Round 6;
  - (c) 1 June 2003, Round 10;
  - (d) 30 August 2003, Round 22;
  - (e) 27 March 2004, Round 1;
  - (f) 7 May 2005, Round 7;
  - (g) 12 June 2005, Round 12;
  - (h) 3 September 2005, elimination final, twice in the first quarter;
  - (i) 8 April 2006, Round 2, in both the third quarter and the fourth quarter;
  - (j) 15 April 2006, Round 3;
  - (k) 5 May 2006, Round 6;
  - (l) 26 July 2006, Round 16;

- (m) 3 September 2006, Round 22, in both the second quarter and the fourth quarter;
- (n) 15 April 2007 – VFL match;
- (o) 27 May 2007, Round 9;
- (p) 21 September 2007, preliminary final, twice in the first quarter;
- (q) 3 May 2008, Round 7;
- (r) 19 September 2008, preliminary final, in both the first quarter and the fourth quarter;
- (s) 18 April 2009, Round 4;
- (t) 16 May 2009, Round 8, in both the first quarter and the fourth quarter;
- (u) 31 May 2009, Round 10;
- (v) 25 July 2009, Round 17; and
- (w) 1 August 2009, Round 18.

**PARTICULARS**

Footage of the AFL Competition incidents are available from Rooke's solicitors on request.

Further concussions may be identified, and further particulars given, following discovery.

51. Further, when training, Rooke sustained significant head knocks and/or suffered from, or showed symptoms consistent with, concussions.

**PARTICULARS**

As best as Rooke can currently say as to the dates of such head knocks and concussions, Rooke sustained head knocks and concussions on or about 2 August 2001, 2 April 2002, and 4 March 2006.

Further, Rooke sustained head knocks or concussions in pre-season practice matches on 25 February 2006, 4 March 2006, 23 February 2008 and 13 March 2009. Video footage of the same are available for inspection.

Further particulars may be provided following discovery.

52. During Rooke's AFL career, following a head knock, Rooke was not reasonably, or at all:

- (a) monitored for symptoms of concussion;



- (b) given a mandatory period during which he was not permitted to play a match or train for a minimum of 12 days;
  - (c) assessed, or adequately assessed, by a medical officer following concussion or head knocks;
  - (d) gradually returned to training and then matches while monitored for subtle changes caused by concussion; or
  - (e) medically assessed to determine whether he was (no longer) fit to play in matches or train because of one or more concussions he had suffered.
53. Further, on repeated occasions after Rooke's head knocks and concussions, he continued to play and/or returned to training during a period when he had not recovered, or fully recovered, from symptoms of concussion.

#### **PARTICULARS**

Rooke refers to and repeats sub-paragraphs (a) to (c), and (e) to (w) of paragraph 50 above, where Rooke continued to play or returned to play following Rooke's head knocks and concussions. Video footage of matches evidencing Rooke's continued play or return to play is available for inspection.

Further, in the pre-season practice matches, he continued to play on 25 February 2006, 23 February 2008 and 13 March 2009.

Further particulars may be provided following discovery.

54. Further, on repeated occasions after Rooke's head knocks and concussions, he was exposed to further head knocks and concussions during matches and when training when he had not recovered, or fully recovered, from symptoms of concussion.

#### **PARTICULARS**

Rooke refers to and repeats sub-paragraphs (h), (i), (m), (p), (r) and (t) of paragraph 50 above, and video footage of matches evidencing further head knocks and concussions following initial head knocks and concussions, which is available for inspection.

Further, this occurred on 23 February 2008 in a pre-season practice match.

Further particulars may be provided following discovery.

55. Further, during Rooke's career he was not advised, warned and educated, adequately or at all, by the AFL or, through it, by the Geelong Football Club, on the risks of head knocks, signs and symptoms of concussions and the concussion management risk of harm.
56. In the premises of paragraphs 50 to 55 above, the AFL:
  - (a) failed to take the reasonable precautions; and
  - (b) acted negligently and breached the duty of care it owed to Rooke.
57. Further, or in the alternative, by reason of the matters set out at paragraphs 50 to 55 above, during Rooke's AFL career, the AFL breached its statutory duty owed to Rooke under the 1999 Regulations and the 2007 Regulations.
58. As a result of the AFL's negligence and/or breach of statutory duty, Rooke suffered injury ('**Rooke's injuries**').

#### **PARTICULARS OF INJURY**

- (a) ABI; and
  - (b) psychiatric injury.
59. If the AFL had complied with the reasonable precautions, Rooke would not have suffered the injury and/or the extent of injury.
60. Within the meaning of section 51(1)(a) of the *Wrongs Act*, and in the premises of paragraphs 50 to 59 above, the AFL's negligence and/or breach of statutory duty were a necessary condition of the occurrence of Rooke's injuries.
61. Further, by reason of the AFL's negligence and/or breach of statutory duty, within the meaning of section 51(1)(b) of the *Wrongs Act*, it is appropriate for the scope of the AFL's negligence and/or breach of statutory duty to extend to the injuries caused to Rooke.

**PART VII – LOSS AND DAMAGE**

62. As a result of the AFL's negligence and/or breach of statutory duty, Rooke and the group members have suffered and continue to suffer loss and damage.

**PARTICULARS REQUIRED UNDER RULE 13.10(4) - ROOKE**

After his AFL career, Rooke worked as a development coach for Geelong for around four years.

Rooke then worked for around one year for the Gold Coast Suns Football Club.

From around 2016 to 2020, Rooke worked for Melbourne Football Club.

Because of Rooke's injuries, his capacity to perform in these roles was affected and/or limited and he was unable to advance in his post-AFL career.

Further, since about 2020, Rooke has had limited work from time to time, including in football coaching positions, but his employment capacity is severely limited by Rooke's injuries.

Further particulars will be provided in due course by way of a List of Special Damages.

**PARTICULARS OF INJURY, LOSS AND DAMAGE****OTHER GROUP MEMBERS**

Particulars relating to the other group members will be provided following the trial of the common issues.

**PART VIII – COMMON QUESTIONS OF LAW OR FACT**

63. The questions of law or fact common to the claims of Rooke and each of the group members are:

- (a) Whether the AFL owed a general duty of care to the AFL players.
- (b) Whether the AFL owed a non-delegable duty of care to the AFL players.
- (c) Whether there existed in the period a concussion management risk of harm.
- (d) The state of medical knowledge regarding the concussion management risk of harm from time to time over the period.
- (e) What the AFL actually knew, or ought reasonably to have known, of the concussion management risk of harm from time to time over the period.
- (f) The content and/or scope of any duty of care owed by the AFL to players including whether reasonable care required the AFL to undertake any and which of the reasonable precautions in response to the concussion management risk of harm.
- (g) Whether during the period the AFL had the ability to control and enforce the rules relating to medical assessment of AFL players, management of player injuries and concussion management.
- (h) Whether the AFL breached any duty owed to Rooke and the injured players and the deceased players by its failures to undertake the reasonable precautions.
- (i) Whether the AFL players are able to bring a claim for breach of statutory duty pursuant to the OHS regulations.
- (j) Whether the AFL players were 'employees' of the AFL under the extended definition of 'employee' in the OHS regulations.
- (k) Whether the AFL players were engaging in hazardous manual handling under the OHS regulations.
- (l) Whether the AFL breached any and which of the OHS regulations.
- (m) The principles for identifying the cause of Rooke's and the injured players' and deceased players' ABIs (but not including a determination of causation of injury of the injured players and the deceased players).
- (n) The principles for identifying and measuring Rooke's and the injured players' damages, and, where relevant to past losses, the damages suffered by the deceased players, resulting from the breaches alleged (but not including the assessment of damages of the AFL players).

**AND THE PLAINTIFF CLAIMS** on his own behalf and on behalf of the group members:

- A. Damages;
- B. Interest pursuant to the *Supreme Court Act 1986* (Vic); and
- C. Costs.

**Timothy P. Tobin**  
**Stella Gold**  
**Peter G. Hamilton**

*Margalit Lawyers*  

---

**MARGALIT INJURY LAWYERS**  
Solicitors for the Plaintiff