



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

Case: S ECI 2023 00969

Filed on: 04/03/2024 03:54 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

REPLY

Date of Document:	4 March 2024	Solicitors Code:	113394
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In answer to the Defendant's Defence dated 12 February 2024 (**'the Defence'**), the Plaintiff says:

1. As to paragraphs 65 to 67 of the Defence:
 - a. the relevant risk of harm was the concussion management risk of harm as that term is defined in paragraph 28 of the Statement of Claim, not the risk of suffering a concussion and/or head knock;
 - b. the concussion management risk of harm was not obvious to a reasonable person in the position of the Plaintiff within the meaning of sections 53 and 54(1) of the *Wrongs Act 1958* (Vic) (**'Wrongs Act'**);
 - c. the Plaintiff did not freely or voluntarily, or with awareness of the risk, or with full appreciation of the risk, agree to incur the concussion management risk of harm.
2. As to paragraph 68 of the Defence:

- a. the concussion management risk of harm as that term is defined in paragraph 28 of the Statement of Claim was not an inherent risk within the meaning of section 55 of the *Wrongs Act*;
 - b. the Defendant had available to it the reasonable precautions, as that term is defined in paragraph 30 of the Statement of Claim; and
 - c. a reasonable person in the position of the AFL would have taken the reasonable precautions as set out in paragraphs 28 to 37 of the Statement of Claim.
3. As to paragraph 72 of the Defence, it is just and reasonable to extend the period of limitation applicable to the Plaintiff's cause of action within the meaning of section 27K of the *Limitation of Actions Act 1958 (Vic)*, having regard to those factors set out in section 27L thereof.
4. As to paragraphs 73 to 74 of the Defence, the group members' limitation periods are suspended in accordance with section 33ZE of the *Supreme Court Act 1986 (Vic)*.
5. As to paragraph 75 of the Defence:
 - a. the *Accident Compensation Act 1985 (Vic)* ('**ACA**') does not apply to those AFL players whose employment was connected with a state other than the State of Victoria during the period 31 August 1985 and 22 December 1997; and
 - b. to the extent that the ACA applies to an AFL player who is injured in the course of their employment connected with the State of Victoria during the period 31 August 1985 and 22 December 1997, during the period 1 December 1992 to 11 November 1997, such players are permitted to bring a common law damages claim under section 135AC of the ACA in circumstances where:
 - i. a player has suffered serious injury incapacity under section 135A of the ACA, having actual subjective knowledge of the same;
 - ii. the serious injury incapacity arising from the injury was not known to the player until after 12 November 1997; and
 - iii. an application for Serious Injury is brought within three years of the incapacity becoming known, which requirement is subject to section 33ZE of the *Supreme Court Act 1986 (Vic)*, being a limitation period within the meaning of section 33ZE of that Act.

6. Save as to admissions contained within the Defence, the Plaintiff otherwise joins issue with each of the denials and non-admissions contained therein.

Timothy P. Tobin

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Peter G. Hamilton

Paul Lamb

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