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

No S ECI 2023 00969

BETWEEN:

JARAD MAXWELL ROOKE

Plaintiff

and

AUSTRALIAN FOOTBALL LEAGUE (ACN 004 152 211)

First Defendant

and

GEELONG FOOTBALL CLUB (ACN 005 150 818)

Second Defendant

DEFENCE OF THE SECOND DEFENDANT TO THE AMENDED STATEMENT OF CLAIM

Date of document: 20 December 2024

Filed on behalf of: The Second Defendant

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To the amended statement of claim filed by the plaintiff on 20 September 2024 (**ASC**), the Second Defendant (**Geelong**) says as follows:

Note: This defence is filed without prejudice to, and with full reservation of rights as to, Geelong's entitlement to contend that the amended statement of claim, insofar as it purports to commence a group proceeding against Geelong under Part 4A of the Supreme Court Act 1986 (Vic) (**Act**)*, should be struck out for, among other things, failing to satisfy s 33C and s 33H of the Act, and/or failure to allege as against Geelong that the requirements of s 33C and s 33H of the Act have been satisfied.*

1. It admits that until 23 January 1990 the first defendant was known as the Victorian Football league (**VFL**), and it otherwise does not admit the allegations in paragraph 1.

2. Save that it says that the first defendant has been known as the Australian Football League or the AFL since about 24 January 1990, it admits the allegations in paragraph 2.

3. It refers to and repeats paragraphs 2 and 3 above, and otherwise admits the allegations in paragraph 3.

4. It admits the allegations in paragraph 4.

5. As to paragraph 5:

   (a) it refers to and repeats paragraphs 1 and 2 above;

   (b) it does not admit the allegations in sub-paragraphs 5(a) to (c);

   (c) to sub-paragraph 5(d):

      (i) it admits that:

         (A) during the period (as defined in the ASC) it had a licence, granted by the VFL, to a field team in a football competition conducted by the VFL and, subsequently, the AFL;

         (B) the licence under which it fielded a team in the football competition conducted by the AFL during the period of the plaintiff's playing career at Geelong (**JMR Playing Period**) was issued by the VFL on or about 14 December 1983, and it will rely on the full terms and effect of the licence at trial;

      (ii) it otherwise does not admit the allegations therein;

   (d) it admits the allegations in sub-paragraph 5(e) insofar as they relate to it, and otherwise does not admit the allegations therein;

   (e) to sub-paragraph 5(f):

      (i) it refers to and repeats sub-paragraph 5(g) and paragraph 7, below;

      (ii) it otherwise does not admit the allegations therein;

   (f) it admits the allegations in sub-paragraph 5(g) and says further that:

      (i) the AFL and the AFL Players Association entered into Collective Bargaining Agreements (**CBAs**) prior to and during the JMR Playing Period, the full terms and effect of which it will rely on at trial;

      (ii) it, the AFL, and Geelong players (including the plaintiff) entered into standard playing contracts (**SPCs**), the full terms and effect of which it will rely on at trial;

(g) to sub-paragraph 5(h):

(i) it admits that the AFL issued and administered AFL Player Rules, AFL Rules, AFL Regulations, Laws of Australian Football, and AFL Players' Code of Conduct, and that it and its players were required to observe those rules, regulations, laws and code (as applicable), and that it was required to observe its licence conditions;

(ii) it otherwise does not admit the allegations therein;

(h) to sub-paragraph 5(i):

(i) insofar as the reference to 'rules' means the AFL Player Rules, AFL Rules, AFL Regulations, Laws of Australian Football, and AFL Players' Code of Conduct, it admits the allegations in sub-paragraph 5(i);

(ii) it otherwise does not admit the allegations therein.

Particulars

The CBAs referred to in sub-paragraph 5(f) that applied during the JMR Playing Period were dated 12 July 1999 (for the period 1998-2003), 23 March 2004 (for the period 2003-2008), and 5 July 2007 (for the period 2007-2011).

6. As to paragraph 6:

(a) it admits that during the JMR Playing Period, the AFL permitted it to place its players, including the plaintiff, in the VFL competition;

(b) it admits that insofar as they applied to it, it was subject to rules, regulations, laws and codes for the VFL competition;

(c) it otherwise does not admit the allegations therein.

7. As to paragraph 7:

(a) it admits that:

(i) the AFL had the power to make, amend and enforce the AFL Player Rules, AFL Regulations, Laws of Australian Football, and AFL Players Code of Conduct, and to issue guidelines;

(ii) the AFL had the power to conduct the AFL Competition generally;

(iii) insofar as AFL rules, regulations, laws, codes and guidelines, and its licence terms and conditions, were or might have been relevant to the management and prevention of injuries, including head knocks

and concussion, during matches and training, it was subject to and required to observe them;

(b) it refers to and repeats sub-paragraph 5(f) above;

(c) it otherwise does not admit the allegations therein.

Particulars

Guidelines included, for example, the position statement and guidelines known as The Management of Concussion in Australian Football (2008), the Guidelines for Management of Concussion at AFL Level (2011 to 2015), and Guidelines for the Management of Sport-Related Concussion at AFL Level (and, from 2020, AFLW Level) (2019-2023). Further particulars may be provided prior to trial.

7A. It admits the allegations in paragraph 7A.

7B. It admits the allegations in paragraph 7B.

7C. As to paragraph 7C:

(a) it admits that during the JMR Playing Period players were registered with the AFL to play for Geelong, and that it was permitted only to play, in its team, players who had been so registered;

(b) it says that the registering of players was done by the AFL, not by it;

(c) it otherwise does not admit the allegations therein.

7D. As to paragraph 7D:

(a) it admits that it was the employer of the players registered with the AFL to play for it, and that it remunerated its players in accordance with the terms and conditions of their SPCs and applicable CBA;

(b) it says that the full terms and conditions, and extent of, player entitlements, including remuneration, were set out in the SPCs and CBAs, together with its and the AFL's commitments and obligations in those respects.

7E. As to paragraph 7E:

(a) it refers to and repeats sub-paragraph 5(g), and paragraphs 7, 7C and 7D, above;

(b) it otherwise admits the allegations therein.

7F. As to paragraph 7F:

(a) it refers to and repeats paragraph 7E above and admits that it was required to follow (and, in that sense, enforce) such rules, regulations, laws, codes, and guidelines issued by the AFL which applied to it, including with respect to injury management of its players in (and following) matches and training;

(b) it says that:

(i) it engaged medical practitioners and/or allied health professionals to provide assessment, treatment, advice and monitoring of its players, in and following matches and training, including with respect to head knocks and concussions;

(ii) it relied on the expertise of its medical practitioners and/or allied health professionals to perform the roles referred to in the preceding sub-paragraph, including medical advice regarding the removal of players from participation in training or matches, their treatment, and their return to training and matches;

(iii) any power that it had to make and enforce decisions about participation of players in matches and training in circumstances where a player may have had or did have an injury or other medical condition depended upon, among other things, players' rights to confidentiality in respect of personal medical conditions and circumstances, a player's disclosure of such conditions and circumstances to Geelong, and a player's responsibility to take care for their own health and safety;

(iv) subject to compliance with the rules, regulations, laws, codes, and guidelines issued by the AFL which applied to it, the terms of its licence and any player SPC and applicable CBA, and the advice and direction of its medical practitioners and/or allied health professionals, and based on information available to it at the time including from the relevant player or players, it had power to make decisions about the participation of its players in matches and training following an injury to the player(s);

(v) subject to the matters pleaded in the preceding sub-paragraphs, its players were able to exercise their own judgement in determining whether and how to participate in training and matches, and to follow medical, allied health or other advice, having regard to the risk of injury to their head, and the consequences of such injury;

(c) it says further that:

(i) subject to the terms of its licence, it denies that it was responsible for enforcing rules of the AFL;

(ii) the paragraph is vague and embarrassing, including by reason of the rolled-up nature of the allegations and the absence of particulars of the 'rules' referred to, and that the allegations are liable to be struck out;

(d) it otherwise denies the allegations therein.

8. It admits the allegations in paragraph 8.

9. As to paragraph 9:

(a) it refers to and repeats paragraph 7C above, and otherwise admits the allegations in sub-paragraph (a);

(b) to sub-paragraph 9(b):

(i) it admits that it, the AFL, and the plaintiff, entered into SPCs on:

(A) 11 December 2001, for a term expiring on 31 October 2022;

(B) 25 November 2022, for a term expiring on 31 October 2004;

(C) 12 November 2003, for a term expiring on 31 October 2005;

(D) June 2005, for an initial term expiring on 31 October 2007, and which was varied on or around 31 October 2007 to extend the term until 31 October 2010;

(ii) it otherwise does not admit the allegations therein;

(c) it admits the allegations in sub-paragraphs 9(c) and (d).

10. As to paragraph 10, insofar as the allegations are made against it, it says that the proceeding against it does not meet the requirements of Part 4A of the Act, and any proceeding should continue only as a claim by the plaintiff (on his own behalf) against it, and it otherwise does not admit the allegations therein.

11. As to paragraph 11:

(a) it refers to and repeats paragraph 10 above;

(b) it says that:

(i) insofar as the allegations are made against it, they fail to allege that there are 7 or more persons who played for Geelong during the period who meet the criteria in s 33C of the Act, and sub-paragraphs 11(b) to (d) of the ASC, and therefore:

(A) the proceeding against it has not been commenced in conformity with the requirements of Part 4A of the Act, and the proceeding should continue only as a claim by the plaintiff (on his own behalf) against it;

(B) further or alternatively, the allegations are embarrassing and are liable to be struck out;

(ii) whether a player has suffered or is suffering an acquired brain injury requires a medical diagnosis and, only insofar as such a diagnosis been obtained, is a player capable of being a group member;

(c) it otherwise does not admit the allegations therein.

12. It refers to and repeats paragraph 11 above, and otherwise does not admit the allegations in paragraph 12.

13. It refers to and repeats paragraph 11 above, and otherwise does not admit the allegations in paragraph 13.

14. As to paragraph 14:

(a) it refers to and repeats paragraphs 11 to 13 above;

(b) it says that:

(i) it is unclear whether, by reference to s 73 of the *Wrongs Act* in sub-paragraph 14(a) of the ASC, the plaintiff alleges that the group members in paragraph 14 are persons to whom s 73(1) of the *Wrongs Act* applies;

(ii) if the plaintiff is alleging that the group members in paragraph 14 are persons to whom s 73(1) of the *Wrongs Act* applies, then its liability (which is denied) is limited to circumstances prescribed by s 73(1), which the plaintiff has failed to allege in his ASC;

(iii) if the plaintiff is not alleging that the group members in paragraph 14 are persons to whom s 73(1) of the *Wrongs Act* applies, then s 73 of the *Wrongs Act* is irrelevant;

(iv) accordingly, the allegations in paragraph 14 are embarrassing and are liable to be struck out;

(v) whether a person has suffered or is suffering a recognised psychiatric illness requires a medical diagnosis, and, only insofar as such a diagnosis been obtained, is a person, to whom the allegations in paragraph 14 relate, a group member;

(c) it otherwise does not admit the allegations therein.

15. As to paragraph 15:

(a) it refers to and repeats paragraphs 11 to 14 above;

(b) it otherwise does not admit the allegations therein.

16. As to paragraph 16:

(a) it admits the allegations in sub-paragraph 16(a);

(b) it says that the allegation in sub-paragraph 16(b) as to what was reasonably foreseeable over a period of more than 38 years (between 1 January 1985 and 14 March 2023) regarding a non-specific and generalised risk of long-term injury or death, is vague and embarrassing and not capable of being pleaded to, and under cover of that objection it denies the allegations therein;

(c) it admits that some players, after sustaining a head injury and/or a concussion injury caused by a head knock, during a match or training, may have sought to continue playing or training, and to that extent it admits the allegations in sub-paragraph 16(c), and it otherwise denies the allegations therein;

(d) it otherwise denies the allegations in paragraph 16.

17. It refers to and repeats paragraph 16 above, and otherwise denies the allegations in paragraph 17.

18. It refers to and repeats paragraphs 5 to 7 and 7D to 7F above, and otherwise does not admit the allegations in paragraph 18.

19. It refers and repeats paragraphs 5 to 7 and 7D above, and otherwise does not admit the allegations in paragraph 19.

20. As to paragraph 20:

(a) it says that:

(i) the game of AFL is a physical, contact sport, with an inherent risk of head injuries and concussions to players, and that control is not capable of being exercised to avoid the materialisation of that risk;

(ii) players participated in the game of AFL, in matches and training during the period, aware of the matters alleged in the preceding sub-paragraph;

(b) it refers to and repeats paragraphs 18 and 19 above;

(c) it otherwise denies the allegations in paragraph 20.

20A. As to paragraph 20A:

(a) it refers to and repeats paragraphs 5 to 7, and 7D to 7F, above;

(b) it says that the allegations in paragraph 20A are vague and embarrassing in that:

(i) they fail to specify the rules, protocols and procedures relied on; and

(ii) they do not identify a time period to which the allegations relate;

(c) it otherwise denies the allegations in paragraph 20A.

20B. It refers to and repeats paragraphs 5 to 7, 7D to 7F, 20 and 20A above, and denies the allegations in paragraph 20B.

21. As to paragraph 21:

(a) it refers to and repeats paragraphs 5 to 7, 7D to 7F, 20 and 20A above;

(b) it says that the generalised allegation about "acts or omissions" over the whole of the period is vague and embarrassing, and is not capable of being pleaded to;

(c) under cover of the objection in the preceding sub-paragraph, it denies the allegations in paragraph 21.

22. As to paragraph 22:

(a) it admits that its players did not have a personal ability to have and enforce their own rules, protocols and systems as alleged;

(b) it refers to and repeats paragraphs 5 to 7, 7D, 7F, 20 and 20A above;

(c) it says that players were also represented by, among others, managers and the AFL players association;

(d) it otherwise does not admit the allegations therein.

23. It refers to and repeats paragraphs 5 to 7, 7D, 7F, 20 and 20A above, and 25A below, and otherwise denies the allegations in paragraph 23.

24. It does not admit paragraph 24 as it contains no allegations against it.

24A. As to paragraph 24A:

(a) it denies the allegations in sub-paragraph (a);

(b) it refers to and repeats paragraphs 7C and 7D above, and otherwise admits the allegations in sub-paragraph (b).

25. It does not admit paragraph 25 as it contains no allegations against it.

25A. As to paragraph 25A:

(a) it admits that it owed players with which it had entered into a SPC during the period a duty to exercise reasonable care to avoid exposing them to unnecessary risks of injury in matches and club training, including providing a safe system of work;

(b) it says that the scope and content of its duty of care was informed by the AFL rules, regulations, laws, code, guidelines, licence conditions, SPCs and CBAs to which it was subject, as well as AFL being a physical, contact sport with an inherent risk of injury to players;

(c) it refers to and repeats paragraphs 7A to 7F, and 16 to 23, above;

(d) it otherwise denies the allegations in paragraph 25A.

26. As to paragraph 26:

(a) insofar as allegations relate to it:

(i) it refers to and repeats paragraph 25A above;

(ii) it says that the allegations are embarrassing because any duty owed by it was as employer, and not by reference to whether the relationship with its players was "analogous" to the duty owed by an employer to an employee;

(b) it otherwise does not admit the allegations therein.

27. Save that it admits that as an employer, it owed a non-delegable duty of care in the terms alleged in paragraph 25A above, it otherwise denies the allegations in paragraph 27.

28. Save that it admits that the matters alleged in sub-paragraphs 28(a) and (b) were reasonably foreseeable by it, it denies the allegations in paragraph 28.

29. It does not admit paragraph 29 as it contains no allegations against it.

30. It refers to and repeats paragraphs 7, 7F, 20 and 28 above, says that s 48 of the *Wrongs Act* did not commence until 3 December 2003, and otherwise denies the allegations in paragraph 30.

31. As to paragraph 31:

(a) it refers to and repeats paragraph 28;

(b) it denies the allegations therein;

(c) it says further that paragraph 31 is embarrassing and liable to be struck out:

(i) insofar as the allegation relies on s 48(2)(a) of the *Wrongs Act*:

(A) that section requires the identification of the probability that the harm would occur if care were not taken, which the allegations in paragraph 31 of the ASC fail to do;

(B) that section did not come into operation until 3 December 2003; and

(ii) by reason of the failure to allege any time period to which the allegations relate (although it is assumed that the whole of "the period" as defined in the ASC is intended to be included).

32. It refers to and repeats paragraphs 28 and 31 above and denies the allegations in paragraph 32.

33. It refers to and repeats paragraph 30 above and otherwise denies the allegations in paragraph 33.

34. It refers to and repeats paragraph 31 above and otherwise denies the allegations in paragraph 34.

35. As to paragraph 35:

(a) it admits that the promotion and preservation of the health and safety of its players will generally benefit its players and, in that sense, involve a positive social utility;

(b) it says that the expression "social utility" within the meaning of s 48(2)(d) of the *Wrongs Act* concerns the social utility of the activity creating the alleged risk of harm and not, as is alleged in paragraph 35 of the ASC, the social utility of the alleged reasonable precautions to avoid the risk of harm;

(c) it refers to and repeats paragraph 30 above;

(d) it otherwise denies the allegations therein.

36. It refers to and repeats paragraph 35 above and otherwise denies the allegations in paragraph 36.

37. It denies the allegations in paragraph 37.

38. As to paragraph 38:

(a) it refers to and repeats paragraphs 23 and 25A above;

(b) it says that the allegations in paragraph 38 of the ASC impermissibly elide allegations relating to duty of care and allegations relating to breach of that duty, and are embarrassing;

(c) it otherwise denies the allegations therein.

39. It denies the allegations in paragraph 39.

40. It does not admit paragraph 40 as it contains no allegations against it.

40A. As to paragraph 40A:

(a) it refers to and repeats paragraphs 7, 7F, 20 and 25 above;

(b) it denies that it breached its duty of care to its players;

(c) it says that the allegations in paragraph 40A fail to properly particularise:

(i) the system for the monitoring of symptoms of concussion as alleged in sub-paragraph 40A(a);

(ii) the assessment of the risk of head knocks and concussions as alleged in sub-paragraph 40A(h);

(iii) the studying and monitoring of the effect of head knocks and concussions as alleged in sub-paragraph 40A(i);

(iv) the advice, the warnings and the education that should have been given to its players as alleged in sub-paragraph 40A(j);

such that it is not possible to plead to these allegations because the standard required to meet the alleged omissions has not been stated;

(d) it otherwise denies the allegations in paragraph 40A.

41. It denies the allegations in paragraph 41.

42. It does not admit paragraph 42 as it contains no allegations against it.

43. It does not admit paragraph 43 as it contains no allegations against it.

43A. Save that it refers to and repeats paragraph 7C above, it admits the allegations in paragraph 43A.

43B. Save that it refers to and repeats paragraph 43A above, and admits that it was bound by the duties of an employer as they applied to it under the OHS legislation (as defined in the ASC), it otherwise denies the allegations in 43B.

44. It denies the allegations in paragraph 44.

45. It denies the allegations in paragraph 45.

46. It denies the allegations in paragraph 46.

47. It denies the allegations in paragraph 47.

48. It refers to and repeats paragraphs 42 to 47 above and denies the allegations in paragraph 48.

49. It denies the allegations in paragraph 49.

50. As to paragraph 50:

    (a) it says that the allegations are rolled up, vague and conclusory because for each date referred to it does not identify whether the plaintiff "*sustained a significant head knock*" or "*suffered from, or showed symptoms consistent with, concussions*" or "*suffered from loss of consciousness*";

    (b) under cover of that objection, it admits that:

        (i) on or about 30 March 2002, 27 March 2004, 12 June 2005, 15 April 2007, 18 April 2009 and 2 June 2009, the plaintiff was assessed as suffering from, and/or showing symptoms consistent with, a concussion;

        (ii) in September 2006, the plaintiff was assessed as having sustained an injury from a head knock;

    (c) it otherwise does not admit the allegations therein.

51. As to paragraph 51:

    (a) it says that the allegations are rolled up, vague and conclusory;

    (b) under cover of that objection, it admits that on or about 2 August 2001 and 4 March 2006, the plaintiff was assessed as suffering from, and/or showing symptoms consistent with, a concussion;

    (c) it otherwise does not admit the allegations therein.

52. As to paragraph 52:

    (a) insofar as the allegations concern it, and involve an allegation of it not having "reasonably" taken the steps in sub-paragraphs 52(a) to (c), the allegations fail to properly particularise what reasonable conduct (involving monitoring and assessing) required on each occasion, nor does it identify the head knocks following which it is alleged that the steps in sub-paragraphs 52(a) to (c) were not taken;

    (b) under cover of that objection, it denies the allegations in paragraph 52;

    (c) it says further that:

(i) during the JMR Playing Period, Geelong provided a system for:

(A) medical coverage for team training sessions throughout the year;

(B) two doctors to be in attendance at each AFL game and one doctor to be in attendance at each VFL game;

(C) the assessment of all players' fitness and injury status by the club's doctor in conjunction with the sports medicine and physical performance team, including assessment of any player injuries on match day;

(ii) the plaintiff was assessed by a medical officer on each of the occasions referred to in sub-paragraphs 50(b)(i) and 51(b) above;

(iii) the plaintiff received injury-management for concussion during the JMR Playing Period, including in April 2007, April 2009 and June 2009; and

(d) it refers to and repeats paragraph 7F above.

53. As to paragraph 53:

(a) it admits that the plaintiff continued to play and/or returned to play on 4 May 2003, 1 June 2003, 27 March 2004, 7 May 2005, 3 September 2005, 8 April 2006, 15 April 2006, 5 May 2006, 26 July 2006, 3 September 2006, 27 May 2007, 21 September 2007, 3 May 2008, 19 September 2008, 18 April 2009, 16 May 2009, 31 May 2009, 25 July 2009 and 1 August 2009;

(b) it otherwise does not admit the allegations therein;

(c) it refers to and repeats sub-paragraph 7F(b) above;

(d) it says further that:

(i) on a number of occasions, the plaintiff did not train or play the week (or weeks) following a head knock/concussion, including for precautionary reasons;

(ii) the plaintiff did not always tell the club's doctor(s) when he had symptoms of concussion or had sustained a significant head knock.

54. It refers to and repeats sub-paragraph 53(a) above and otherwise does not admit the allegations in paragraph 54.

55. It denies the allegations in paragraph 55.

56. It denies the allegations in paragraph 56.

57. It denies the allegations in paragraph 57.

58. It denies the allegations in paragraph 58.

59. It denies the allegations in paragraph 59.

60. It denies the allegations in paragraph 60 and says further that s 51 of the *Wrongs Act* did not commence operation until 3 December 2003.

61. It denies the allegations in paragraph 61 and says further that s 51 of the *Wrongs Act* did not commence operation until 3 December 2003.

62. It denies the allegations in paragraph 62.

63. As to paragraph 63:

    (a) it denies that the allegations in sub-paragraphs 63(c), (d) and (l) are questions to be determined at the initial trial of the proceeding, having regard to the admissions made by it at sub-paragraph 25A(a) and paragraphs 7D, 27 and 43A above;

    (b) it denies that the questions in sub-paragraphs 63(e) to (j) and (p) are common questions across all members of the group having regard to the time period over which the allegations are made and to which this proceeding relates;

    (c) it denies that sub-paragraphs 63(q) and (r) are common questions and says that questions of causation and loss are individual questions;

    (d) it otherwise does not admit the allegations in paragraph 63.

64. Further, it says that:

    (a) the plaintiff's claims (and the claims of any group members with claims against Geelong which accrued six or more years prior to the filing of the writ) are barred by the operation of s 27D of the *Limitation of Actions Act* 1958 (Vic);

    (b) to the extent that the plaintiff, or any group member with a claim against Geelong, claims personal injury damages for pain and suffering and/or non-economic loss, they are precluded from doing so until they comply with the requirements of Part VBA of the *Wrongs Act*, and it otherwise relies on Parts VA, VB and X of the Act;

    (c) for any Geelong player who suffered injury between 4 pm on 31 August 1985 and 22 December 1997, arising out of or in the course of their employment with Geelong who lodged a claim or commenced a proceeding before 1 June 2006, then such group member cannot recover any damages

or bring any proceedings against it by reason of ss 134A(1), 135A, 135B and 135AC of the *Accident Compensation Act* 1985 (Vic), except as permitted by and in accordance with that Act. To the extent the present proceeding is brought on behalf of any such group member, such group member has no cause of action against the GFC, absent compliance with that Act;

(d) to the extent that the plaintiff brings the proceeding against it on behalf of deceased players (as alleged in paragraph 12 of the ASC), any damages that may be recovered for the benefit of that deceased player are to be assessed having regard to the matters set out in s 29(2) of the *Administration and Probate Act 1958* (Vic).

65. Further or alternatively, it says that:

(a) it relies upon the provisions of Parts VA, VB, and X of the *Wrongs Act* in answer to Rooke's claim and any group member with a claim against Geelong;

(b) in the JMR Playing Period the plaintiff:

(i) knew that there was a risk of injury (including a risk of head knocks and concussion) from participating as a player in the AFL or VFL; or

(ii) ought reasonably to have known that there was a risk of injury (including a risk of head knocks concussion) from participating as a player in the AFL or VFL;

(c) the risk of the plaintiff suffering an injury as alleged in this proceeding during a match, practice match or training was a risk that was obvious to a reasonable person in the plaintiff's position;

(d) by reason of the risk pleaded in the preceding sub-paragraph being a risk to which s 53 of the *Wrongs Act* applies (since its commencement on 3 December 2003), the plaintiff is presumed by force of s 54 of the *Wrongs Act* to have been aware of the risk;

(e) the plaintiff freely and voluntarily, with awareness of the risk of suffering injury as alleged in this proceeding during a match, practice match or training, impliedly agreed to incur that risk;

(f) the risk of the plaintiff suffering from injury as alleged in this proceeding during a match, practice match or training was an inherent risk;

(g) it is not liable in negligence for the harm suffered by the plaintiff as alleged in this proceeding as any such harm resulted from the materialisation of an inherent risk within the meaning of s 55 of the *Wrongs Act*.

66. It reserves the right to plead contributory negligence following discovery by the plaintiff, and in respect of any group member's claim against it.

Dated: 20 December 2024

M D RUSH

G COLEMAN

Lander & Rogers

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Lander & Rogers
Solicitors for the Second Defendant