Case: S ECI 2023 00969
Filed on: 20/01/2025 03:22 PM

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

No. S ECI 2023 00969

B E T W E E N

JARAD MAXWELL ROOKE

Plaintiff

- and -

AUSTRALIAN FOOTBALL LEAGUE (ACN 004 155 211)

First Defendant

-and-

GEELONG FOOTBALL CLUB LIMITED (ACN 005 150 818) Second Defendant

REPLY TO THE SECOND DEFENDANT'S DEFENCE TO THE AMENDED STATEMENT OF CLAIM

Date of Document:	20 January 2025	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: Email: info@margalitlawyers.com.au	21721

In answer to the Second Defendant's Defence to the Amended Statement of Claim dated 20 December 2024 ('**the Defence**'), the Plaintiff says:

1. As to paragraphs 10 to 13 of the Defence:
   a. Part 4A of the *Supreme Court Act 1986* (Vic) does not require that there be seven or more persons against the Second Defendant in circumstances where seven or more persons have a claim against the First Defendant; and
   b. in the alternative, and in any event, it is likely that there are seven or more persons who have claims against the Second Defendant.
2. As to paragraph 20(a) of the Defence:
   a. the concussion management risk of harm, as that term is defined in paragraph 28 of the Amended Statement of Claim dated 20 September 2024 ('**ASOC**'), was not an inherent risk;

b. the Second Defendant had available to it the reasonable precautions, as that term is defined in paragraph 30 of the ASOC;

c. a reasonable person in the position of the Second Defendant would have taken the reasonable precautions as set out in paragraphs 28 to 37 of the ASOC; and

d. in the alternative, the Second Defendant failed to warn of the risk within the meaning of section 55(3) of the *Wrongs Act* such that section 55 does not exclude the Second Defendant's liability.

3. As to paragraphs 30 and 31 of the Defence, section 48 of the *Wrongs Act 1958* (Vic) ('***Wrongs Act***') extends to negligence before, on or after 3 December 2003 by force of section 66(1) of the *Wrongs Act*.

4. As to paragraph 60 of the Defence, section 51 of the *Wrongs Act* extends to negligence before, on or after 3 December 2003 by force of section 66(1) of the *Wrongs Act*.

5. As to paragraph 64(a) of the Defence, it is just and reasonable to extend the period of limitation applicable to the Plaintiff's and group members' causes 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.

6. As to paragraph 64(c) of the Defence, the *Accident Compensation Act 1985* (Vic) ('**ACA**') has no application to any group member in this proceeding (other than Adrian Whitehead, if he be a group member) as:

a. during the period 4 pm on 31 August 1985 and 22 December 1997, section 16 of the ACA relevantly provided as follows:

> *(1) …where a person is engaged by an employer to participate as a contestant in a sporting or athletic activity, neither the employer or self-insurer nor the Authority or authorised insurer is liable to pay compensation for an injury received by the person*
> *if—*
> *(a) the injury is received while the person is—*
> *(i) participating as a contestant in a sporting or athletic activity;*
> *(ii) engaged in training or preparation with a view to so participating; or*
> *(iii) travelling between a place of residence and the place at which the person is so participating or so engaged; and*
> *(b) the person is not entitled to any remuneration other than for the things specified in paragraph (a) under the contract under which the person does any of those things or under any other contract with the employer.*

b. sub-section 8(1) of the *Accident Compensation (Miscellaneous Amendment) Act 1997* (Vic) amended section 16 of the ACA, such that section 16 of the ACA from 22 December 1997 provided as follows:

> *(1) … where a person is engaged by an employer to participate as a contestant in a sporting or athletic activity, neither the employer or self-insurer nor the Authority or authorised insurer is liable to pay compensation for an injury received by the person if—*
>
> *(a) the injury is received while the person is—*
>
> *(i) participating as a contestant in a sporting or athletic activity;*
>
> *(ii) engaged in training or preparation with a view to so participating; or*
>
> *(iii) travelling between a place of residence and the place at which the person is so participating or so engaged.*

c. section 4 of the *Accident Compensation and Other Legislation (Amendment) Act 2006* (Vic) further amended section 16 of the ACA by providing as follows:

> *After section 16(8) of* [the ACA] *insert —*
>
> *"(9) This section is deemed to have been enacted as amended by section 8(1) of the Accident Compensation (Miscellaneous Amendment) Act 1997.*
>
> *Note: The effect of this provision is that the amendments made by section 8(1) of the Accident Compensation (Miscellaneous Amendment) Act 1997 have effect as from 30 July 1985."*

d. Section 26 of the *Accident Compensation and Other Legislation (Amendment) Act 2006* (Vic) further amended section 16 of the ACA by:

> *288. Section 16*
>
> *(1) Subject to sub-section (3), section 16 as amended by section 4 of the Accident Compensation and Other Legislation (Amendment) Act 2006 applies in respect of any claim or proceedings made or lodged on or after 1 June 2006 irrespective of whether the injury occurred before, on or after 1 June 2006.*
>
> *(2) Subject to sub-section (3), a worker who is or the dependants of a worker who are or may be entitled to compensation in respect of an injury arising out of or in the course of, or due to the nature of, employment only because of the application of section 16 as in force before the commencement of section 4 of the Accident Compensation and Other Legislation (Amendment) Act 2006 shall not, in proceedings in respect of the injury be entitled to compensation except in*

accordance with section 16 as amended by section 4 of the Accident Compensation and Other Legislation (Amendment) Act 2006 .

(3) The amendment of section 16 by section 4 of the Accident Compensation and Other Legislation (Amendment) Act 2006 does not affect the rights of the parties in the proceedings known as Adrian Whitehead v Carlton Football Club Limited & Ors (No. 4905 of 2001) in the Supreme Court of Victoria (Court of Appeal).

7. As to paragraph 65 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 ASOC, 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*;
   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;
   d. the Second Defendant was providing a professional service within the meaning of section 54(2)(a) of the *Wrongs Act*, such that section 54(1) of the *Wrongs Act* does not apply to the Plaintiff's or group members' claims; and
   e. these proceedings are a claim for damages in respect of risks associated with work done by one person, the Plaintiff and group members, for another, the First Defendant and/or the Clubs (as that term is defined in paragraph 5(d) of the ASOC), including the Second Defendant, within the meaning of section 54(2)(b) of the *Wrongs Act*, such that section 54(1) of the *Wrongs Act* does not apply to the Plaintiff's or group members' claims.
8. Save as to admissions contained within the Defence, the Plaintiff otherwise joins issue with each of the denials and non-admissions contained therein.

P G HAMILTON

Margalit Injury Lawyers

.....

Margalit Injury Lawyers
Solicitor for the Plaintiff