NOTICE OF FILING

Details of Filing

Document Lodged:	Defence - Form 33 - Rule 16.32
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	3/10/2024 3:45:13 PM AEST
Date Accepted for Filing:	3/10/2024 3:45:20 PM AEST
File Number:	VID728/2024
File Title:	CYRIL RIOLI & ORS v HAWTHORN FOOTBALL CLUB LTD
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.

Defence

No. VID728 of 2024

Federal Court of Australia

District Registry: Victoria

Division: General

Cyril Rioli and others

Applicants

Hawthorn Football Club Ltd

Respondent

Table of Contents

Filed on behalf of The Respondent, Hawthorn Football Club Ltd

Prepared by Chris Hartigan

Law firm Piper Alderman

Tel (03) 8665 5579 Fax

Email chartigan@piperalderman.com.au

Address for service Level 23, 459 Collins Street, Melbourne Vic 3000

AA OVERARCHING OBJECTIONS TO THE PROCEEDING

In response to the applicants' statement of claim dated 26 July 2024 (the **SOC**) the respondent, **Hawthorn** Football Club Limited, says (adopting the definitions used in the SOC unless otherwise indicated) as follows:

A. The proceeding is an abuse of process due to the delay by the applicants in commencing the proceeding.

B. The proceeding as brought by Cyril **Rioli** is an abuse of process by reason of the **Deed of Settlement and Release** entered into by him as set out in paragraph 2(v) below.

C. The **Claims of Negligence** by Carl **Peterson**, Rioli and Jermaine **Miller-Lewis** are statute barred pursuant to s 5(a) of the ***L**imitation of **A**ctions **Act** 1958* (Vic), such applicants having commenced the proceeding after the expiration of the applicable limitation period.

D. By reason of s 79 of the ***Judiciary Act** 1903* (Cth), the claims made under the RD Act (**RD Act Claims)** to the extent to that they seek recovery of a sum of money by way of compensation are statute barred pursuant to s 5(d) of the LA Act, the applicants having commenced the proceeding after the expiration of the applicable limitation period.

E. In respect of the Claims of Negligence, Peterson, Rioli and Miller-Lewis are precluded from recovering damages in respect of their alleged injuries because:
   a. they have not sustained a "*serious injury*" within the meaning of s 325 of ***W**orkplace **I**njury **R**ehabilitation and **C**ompensation **Act** 2013* (Vic) and/or s 134AB of the ***A**ccident **C**ompensation **Act** 1985* (Vic), as the case may be;
   b. they have not complied with the requirements of Part 7, Division 2 of the WIRC Act or s 134AB of the AC Act, as the case may be.

F. Further or alternatively to E, in respect of the Claims of Negligence, Peterson, Rioli and Miller-Lewis are precluded from recovering damages for non-economic loss because:
   a. they have not sustained a "*significant injury*" within the meaning of and for the purpose of Part VBA of the ***Wrongs Act** 1958* (Vic);
   b. they have not complied with the requirements of Part VBA of the Wrongs Act.

G. In respect of the RD Act Claims, to the extent that injury is alleged to arise from the RD Act Claims, by reason of s 79 of the Judiciary Act, Peterson, Rioli and Miller-Lewis are precluded from recovering damages for any alleged injuries because:
   a. they have not sustained a "*serious injury*" within the meaning of s 325 of WIRC Act and/or s 134AB of the AC Act, as the case may be;
   b. they have not complied with the requirements of Part 7, Division 2 of the WIRC Act or s 134AB of the AC Act, as the case may be.

H. Further or alternatively to G, in respect of the RD Act Claims, to the extent that injury is alleged to arise from the RD Act Claims, by reason of s 79 of the Judiciary Act, Peterson, Rioli and Miller-Lewis are precluded from recovering damages for non-economic loss for any alleged injuries because:
   a. they have not sustained a "*significant injury*" within the meaning of and for the purpose of Part VBA of the Wrongs Act;
   b. they have not complied with the requirements of Part VBA of the Wrongs Act.

Under cover of the above objections, Hawthorn says as follows:

A PRELIMINARY

A.1 The applicants

1. Save that it does not know and cannot admit paragraph 1(e), it admits paragraph 1 and says further:

   (a) on or around 25 November 2006, Peterson was drafted to the **Richmond** Football Club in the 2006 AFL draft;

   Particulars

   Peterson was drafted by Richmond from Claremont as the 60th pick in the AFL draft.

   (b) during his employment with Richmond, Peterson did not play a senior AFL game for Richmond;

   (c) on or around October 2007, Peterson was delisted by Richmond following his alcohol use affecting his employment;

(d) in or around 2008, Peterson met with Alastair **Clarkson** in Western Australia to discuss the possibility of Peterson being drafted to Hawthorn;

(e) in around late 2008, Hawthorn's recruitment team raised concerns about Hawthorn drafting Peterson due to concerns relating to his drug use and his failure of a voluntary drug test in or around that time;

Particulars

The concerns were later recorded by Jason **Burt** by email to Mark **Evans** dated 12 May 2011 which contained a summary of Peterson's drug use issues.

(f) in around late 2008, Peterson was drafted to Hawthorn and moved from Western Australia to Melbourne;

(g) during the 2009 season, Peterson did not play any senior AFL games for Hawthorn but played football for the Box Hill Hawks;

(h) from around December 2008 until March 2009, Peterson lived with a Hawthorn host family, Pat and Rob **Benham**;

(i) between December 2008 and March 2009, when staying with the Benhams, Peterson would often stay out late until around 4.00am, regularly leaving the door of the house open or unlocked;

(j) from around February 2009, Rotumah contacted Burt from time to time in respect of her inability to contact Peterson and her concerns in respect of Peterson's continued drug use and behaviour;

(k) in around March 2009, Peterson moved in with Rotumah and her toddler in Heidelberg;

(l) in or around May 2009, Rotumah became pregnant with Peterson's son;

(m) in June 2009, Peterson's grandfather became gravely ill in Perth and Peterson requested personal leave from Hawthorn to go back to Perth to visit him;

(n) Peterson returned to Perth in the VFL mid-season break between around 8 June and 21 June 2009;

(o) David **Flood,** who was the then development coach, picked Peterson up from Melbourne airport on his return from Perth and Peterson:

(i) was incoherent;

(ii) appeared affected by alcohol or illicit substances;

(iii) advised Flood he had no money in his bank account; and

(iv) had lost his clothing;

(p) Flood took Peterson to Burt's house to stay temporarily with Burt, Burt's wife and two young sons;

(q) in around July 2009, approximately one to two weeks after arriving to stay with the Burts, Peterson moved in with Flood and his wife in Carlton;

(r) none of Hawthorn, Burt, Clarkson or Chris **Fagan**, were aware that Rotumah was pregnant:

(i) when Peterson went to Perth in June 2009;

(ii) when Peterson returned to Melbourne in late June 2009; or

(iii) when Peterson moved in with Flood in early July 2009;

(s) in or around late July or early August 2009, when Rotumah was at least 12 weeks pregnant, Peterson informed his teammates and Burt that Rotumah was pregnant;

(t) in late January 2010, Peterson, Rotumah, and her son, moved to a new rental property in Templestowe;

(u) after January 2010, Peterson continued to live part of the time with Flood as suited Peterson;

(v) on 8 February 2010, Peterson and Rotumah's son (**LP**) was born;

(w) in 2010, Peterson played 17 games of senior football for Hawthorn;

(x) in October 2010, Peterson was delisted after the following events:

(i) Peterson was with the Hawthorn team in Perth for an elimination final when Rotumah informed Burt that Peterson had taken marijuana earlier in the week;

(ii) by reason of the matters in (i), Peterson was removed from the elimination final team;

(y) from the time of his delisting and during 2011, Peterson received counselling through the AFLPA.

2. Save that it denies paragraph 2(e), it admits paragraph 2 and says further:

(a) in 2004, aged 14, Rioli moved to Melbourne from Darwin to commence as a boarder at Scotch College Melbourne on a scholarship;

(b) from 2004 until he was drafted to the AFL, Rioli played football for Scotch College when in Melbourne and remained registered with St Mary's Football Club in Darwin;

(c) on or around 24 November 2007, Rioli was 18 years old and was drafted to Hawthorn in the 2007 AFL Draft;

Particulars

Rioli was drafted by Hawthorn as the 12th pick in the AFL Draft.

(d) in early 2008, Rioli played his first game for Hawthorn in Round 1 of the season;

(e) during his career at Hawthorn, Rioli played 189 games, was a member of four premiership teams and was the Norm Smith Medallist in the 2015 AFL Grand Final;

(f) throughout 2008 and 2009, Shannyn **Ah Sam-Rioli** was living in Darwin;

(g) in 2010, Ah Sam-Rioli moved from Darwin to Melbourne to live with Rioli;

(h) from around mid-2010, Ah Sam-Rioli and Rioli separated for some months during which Ah-Sam Rioli returned to Darwin;

(i) in early 2011, Ah Sam-Rioli returned to live with Rioli in Melbourne;

(j) in or around mid-November 2011, at the end of the AFL season, Clarkson visited Rioli in Darwin, and they spent time having a drink together at the Crown Hotel where Clarkson and Rioli discussed Rioli's career potential;

(k) on or around 2 June 2018, whilst waiting at the airport lounge in Tasmania:

(i) The Hon Jeffrey **Kennett**, then President of Hawthorn, said to Ah Sam-Rioli words to the effect of "*I see you have holes in your jeans"*;

(ii) Kennett put his hand over his pocket and said words to the effect of, "*I'll give you change so you can afford to buy thread to stitch those jeans up*";

(iii) Kennett's comments to Ah Sam-Rioli were the same as comments that Kennett had made to a number of non-Indigenous people who wore ripped jeans, and the comments were an attempt at humour and were not motivated by race;

(l) on or around 6 June 2018, Rioli did not attend training and informed Cameron **Matthews**, Player Development Manager, that Ah Sam-Rioli and Rioli were planning to return to Darwin because of Kennett's comments;

(m) also on 6 June 2018, Graham **Wright**, General Manager of Football, attended Rioli and Ah Sam-Rioli's home to talk with Rioli;

(n) also on 6 June 2018, Kennett sent Rioli a text that stated, "*how could you ever think I would offend your wife? You know me better than this. We're supposed to be family*";

(o) shortly after 6 June 2018, Rioli and Ah Sam-Rioli returned to Darwin;

(p) on or around 10 June 2018, Wright met Rioli, Ah Sam-Rioli and Ah Sam-Rioli's brother, Peter, at Ah Sam-Rioli's mother's house in Darwin;

(q) at the meeting on 10 June 2018, Ah Sam-Rioli and her brother, Peter, told Wright that Hawthorn and Kennett are racist, that they wanted Kennett to apologise and resign and for Hawthorn to pay Rioli more money than agreed in his football contract;

(r) in response to the above, Wright told Ah Sam-Rioli and her brother that Kennett did not believe his comments were racist and that the comments were not intended to be so, and that Hawthorn was concerned about their wellbeing and wanted to know what Hawthorn could do for them;

(s) on or around 18 June 2018, Kennett sent Ah Sam-Rioli a handwritten apology;

Particulars

The apology stated:

"*I am very sorry my comments at the Launceston Airport offended you. They were not intended to do so. I have spent a lot of my years since 1980 working with First Peoples communities. The last two with incarcerated Indigenous men and as Chairman of the Torch. I would never and have never intentionally or unintentionally been disrespectful to a member of the Indigenous community. So again, I am very sorry I offended you, and I hope we can get our relationship back on track*."

(t) between 29 June and 1 July 2018, Rioli, Ah Sam-Rioli, Kennett, Adam **Ramanauskas**, the player agent for Rioli, and Wright met at Ramanauskas' office where Kennett apologised again in person to Ah Sam-Rioli and Rioli, and Rioli and Kennett shook hands at the end of the meeting;

(u) on 3 July 2018, Rioli was interviewed by Bruce McAvaney on channel 7 and during that interview, Rioli thanked Hawthorn, the fans and everyone for the opportunities he had been given and stated that he had made the decision to retire and go home to spend time with family;

(v) on 4 July 2018, Rioli and Junior Boy Promotions Pty Ltd (as trustee for the Rioli family trust), Hawthorn and the AFL signed the Deed of Settlement and Release, terminating Rioli's employment contract;

Particulars

The Deed of Settlement and Release is in writing.

(w) In return for valuable consideration provided by Hawthorn, pursuant to the Deed of Settlement and Release, Rioli gave Hawthorn and others a release in the following terms:

(x) "*[Rioli] unconditionally releases and discharges the Club and the AFL, their Related Entities and their associates, directors, employees, servants, shareholders, agents, assigns and insurers from all Claims no matter how the same arose and on every count which now exist or which but for this Deed would exist in relation to the Employment, the Employment Contracts, the Termination and any other matter whether or not referred to or concerning the same subject matter as that referred to in the Background to this Deed, save for any claim under the Workers Rehabilitation And Compensation Act 2013 (Vic)";*

(y) further, pursuant to the Deed of Settlement and Release, Hawthorn paid Rioli valuable consideration.

3. Save that it denies paragraph 3(d), it admits paragraph 3 and otherwise refers to and relies on paragraph 2 above (**the Rioli Matters**) to the extent they are relevant to Ah Sam-Rioli.

4. Save that it does not know and cannot admit paragraph 4(a) and 4(b), it admits paragraph 4 and otherwise refers to and relies on the Rioli Matters.

5. Save that it denies paragraphs 5(c) and 5(e), it admits paragraph 5 and says further:

(a) on or around 3 December 2014, Miller-Lewis was 18 years old and was drafted to Hawthorn in the 2005 AFL Rookie draft;

Particulars

Miller-Lewis was drafted by Hawthorn from South Freemantle as the 36th pick in the AFL Rookie draft.

(b) in or around December 2014, when Miller-Lewis was drafted, he:

(i) was in a relationship with his partner, Ms Montanah **Lewis**, who was also 18-years-old and was seven months pregnant at the time;

(ii) moved to Melbourne where he lived for a short time with Burt and then moved in with Leon **Egan** and his family who acted as a host family;

Particulars

In 2014 and 2015, Egan was also engaged as a contractor on a part time basis as an Indigenous Liaison Officer with Hawthorn.

(iii) commenced pre-season training with Hawthorn;

(c) on 18 January 2015, on the encouragement of Matthews and Burt, Miller-Lewis flew to Perth in order to be present for the birth of his child, **Aryana**;

(d) pursuant to the **2012-2016** AFL **C**ollective **B**argaining **A**greement which applied to Miller-Lewis' employment, Miller-Lewis was:

(i) a "*Rookie*" listed player and as such entitled a base payment of $55,440 (inclusive of superannuation) in respect of the 2015 AFL season;

Particulars

The 2012-2016 CBA, Schedule C, item 4(a).

(ii) as a Rookie listed player, Miller-Lewis was not eligible to play AFL home and away, or finals, matches, unless elevated to the senior list, either to replace a retired player or a player with a long-term injury. He was not elevated to the senior list, and so did not play a senior game and as such was not entitled to senior match payments;

Particulars

The 2012-2016 CBA, Schedule C, item 4(a).

(iii) entitled to reimbursement of his actual relocation costs and the actual cost of his (and his parents') travel to Hawthorn in connection with his relocation;

Particulars

The 2012-2016 CBA, Schedule C, item 4(k), and item 13(a)(ii)(A) and (B).

(iv) entitled to reimbursement for the actual cost of assets in setting up living arrangements as a result of being relocated up to a cost of $6,020 (including fringe benefits tax);

Particulars

The 2012-2016 CBA, Schedule C, item 13(a)(ii)(C).

(v) as a player who relocated from inter-state for the 2015 season a living allowance of $9,780 (excluding fringe benefits tax);

Particulars

The 2012-2016 CBA, Schedule B, item 13(a)(ii)(D).

(vi) as a player who relocated from inter-state, ten return economy flights (two for himself, and eight for his family);

(vii) as a player who relocated from inter-state, his personal relocation costs if he returned to his home state at the end of a first year or second year contract;

(e) on 26 January 2015, Miller-Lewis returned to Melbourne from Perth;

Particulars

The travel itinerary and ticket dated 26 January 2015 are contained in an email from Matthews to Lewis dated 21 January 2015.

(f) during most of 2015, Lewis and Aryana continued to live in Perth;

(g) in February 2015, Miller-Lewis was invited to attend the AFLPA Indigenous Camp, which was scheduled to take place to coincide with the AFL Indigenous All-Stars game to be played in Perth;

(h) Matthews arranged for Miller-Lewis to spend additional time in Perth before and after the AFL Indigenous All-Stars game and AFLPA Indigenous Camp to enable him to spend time with his family;

(i) from around 20 to 23 March 2015, Miller-Lewis returned to Perth to spend time with Lewis and Aryana;

(j) on or around 2 May 2015, Lewis and Aryana travelled from Perth to Melbourne to stay with Miller-Lewis at the Egans;

(k) on 13 May 2015, Lewis and Aryana flew from Melbourne to Perth;

(l) during 2015, Miller-Lewis did not play a senior AFL game for Hawthorn;

(m) on or around 21 September 2015, Miller-Lewis appointed Ben Williams as his player manager;

(n) at the end of the 2015 football season, Miller-Lewis received a one-year extension to his rookie contract for the 2016 season;

(o) in December 2015, Miller-Lewis moved from Egan's home to a rental property in Bayswater North and Lewis and Aryana moved to Melbourne;

(p) during 2016, Miller-Lewis did not play a senior AFL game for Hawthorn;

(q) in August 2016, Hawthorn and the AFLPA assisted Miller-Lewis in obtaining a job at the Clontarf Foundation, a foundation focussed on improving the education, discipline, life skills, self-esteem and employment prospects of young Aboriginal and Torres Strait Islander men;

(r) in around September 2016, Miller-Lewis was delisted by Hawthorn;

(s) in October 2016, Hawthorn notified the AFLPA that Miller-Lewis had been delisted and was relocating back to Perth and that he had a need for ongoing counselling support;

(t) in around October 2016, Hawthorn arranged for and paid for Miller-Lewis, Lewis and Aryana to be relocated to Perth after the AFL had

approved the relocation costs, given they were in excess of the entitlements in the 2012-2016 CBA;

(u) in January 2017, Hawthorn and the AFLPA assisted Miller-Lewis to obtain further psychologist services in Perth;

(v) in December 2017, Hawthorn and the AFLPA offered funded counselling services to Miller-Lewis and Lewis;

(w) in December 2017, Hawthorn's club doctor referred Miller-Lewis to a private facility, the Blackwood River Clinic, for drug rehabilitation and mental health treatment after a request by Lewis for assistance;

(x) by early January 2018, Miller-Lewis failed to attend his admission appointment at the Blackwood River Clinic;

(y) on or around 9 January 2018, Hawthorn arranged for the AFLPA to make hardship payments of $3,000 to Miller-Lewis and Lewis' rental account and $2,500 to Miller-Lewis and Lewis' Private Health Insurance Fund;

(z) at Lewis' request the above payments were not disclosed to Miller-Lewis;

Particulars

The hardship payments and Lewis' request are detailed in a chain of emails between Matthews on behalf of Hawthorn and Brad Fisher and Daniel Archer of the AFLPA and dated 9 January 2018.

(aa) during his employment with Hawthorn, Miller-Lewis did not play a senior AFL game for Hawthorn.

6. Save that it denies paragraph 6(d), it admits paragraph 6 and says further that Miller-Lewis and Lewis were married in February 2023.

7. It does not know and cannot admit paragraph 7.

8. Save that it denies paragraph 8(d), it admits paragraph 8 and says further:

(a) in around 2009, Egan joined AFL Victoria as an Indigenous Program Manager;

(b) from 1 February 2013 until 31 October 2013, Egan was engaged by Hawthorn as an independent contractor through EEGAKAT Consulting, the sole trading business of Egan, to provide the services of management and monitoring of the current welfare of Indigenous players at Hawthorn and to support the development of Indigenous players;

(c) from 13 January 2014 until 31 October 2014 and from 1 November 2014 to 1 November 2015, Egan was engaged in a contractor role by Hawthorn through his employer, AFL Sports Ready, an AFL-supported not-for-profit education and employment training body, as an Indigenous Liaison Officer, reporting to Burt;

(d) from late 2012, Egan and his wife also became a host family for Indigenous players drafted to Hawthorn;

(e) on around 3 October 2015, Hawthorn defeated the West Coast Eagles in the AFL Grand Final;

(f) Egan was not provided a wrist band to access the change rooms after the AFL Grand Final as the AFL policy regarding access to the rooms after an AFL Grand Final in that particular year was more limited by numbers than usual and was confined only to permitted family, partners, club officials, dignitaries and players;

(g) on around 23 December 2015, Egan informed Hawthorn that he was no longer willing to provide Hawthorn with services through his employer, AFL Sports Ready, or at all;

(h) despite the matters in 8(g) above, after December 2015 and until around 2020, Egan continued to provide cultural awareness training and other cultural advisory services to Hawthorn, including conducting cultural sensitivity training and in the volunteer role as a host family.

A.2 The respondent and its employees or agents

9. It admits paragraph 9.

10. It admits paragraph 10.

11. It admits paragraph 11.

12. It admits paragraph 12, save that it was not within the scope of Clarkson's employment with Hawthorn to engage in:

    (a) any alleged conduct in breach of the RD Act (those allegations being denied);

    (b) any alleged intrusion or exercise of control and influence in the family, cultural or non-football lives of players and their families (including any alleged personal control conduct, personally harmful conduct, family control and interference conduct, family control conduct, family control requirement, stereotyping conduct, domineering conduct, culturally harmful conduct, marginalising conduct, inadequate systems conduct, race culture condition and/or discriminatory conduct) (those allegations being denied);

    (c) any alleged breaches of the various AFL policies admitted in paragraphs 21 to 30 below (those allegations being denied),

    (collectively, **the Impermissible Conduct**).

13. Save that it denies that any alleged Impermissible Conduct (which is denied) was within the scope of Fagan's employment, it admits paragraph 13.

14. Save that it denies that any alleged Impermissible Conduct (which is denied) was within the scope of Burt's employment, it admits paragraph 14.

15. Save that it denies that any alleged Impermissible Conduct (which is denied) was within the scope of Matthews' employment, it admits paragraph 15.

16. Save that it denies that any alleged Impermissible Conduct (which is denied) was within the scope of Evans's employment, it admits paragraph 16.

17. Save that it denies that any alleged Impermissible Conduct (which is denied) was within the scope of Kennett's responsibilities or agency, it admits paragraph 17.

18. Save that it denies that any alleged Impermissible Conduct (which is denied) was within the scope of Wright's employment, it admits paragraph 18.

A.3 Proceedings terminated in the Australian Human Rights Commission

19. It admits paragraph 19.

20. It admits paragraph 20.

B HAWTHORN'S CONDUCT

B.1 Policy framework

21. It admits paragraph 21.

22. It admits paragraph 22.

23. It admits paragraph 23.

24. It admits paragraph 24.

25. It admits paragraph 25.

26. It admits paragraph 26.

27. It admits paragraph 27.

28. It admits paragraph 28.

29. It admits paragraph 29.

30. It admits paragraph 30 and says further:

    (a) at all material times, the AFL Rules have required Hawthorn to comply with all AFL policies;

    (b) at all material times, Hawthorn has been required by the AFL Rules to comply with rules concerning the Total Player **Payments Cap**, which restricts the total payments made to players;

    (c) since October 2014, Hawthorn has been required by the AFL Rules to comply with the Football Department Expenditure **Soft Cap**, which restricts the expenditure by AFL clubs on their football departments.

B.2 Employment relationship

31. As to paragraph 31 it:

(a) admits that all players were employed and says further that all employment contracts with players, including those of the relevant applicants, were and are tripartite contracts between Hawthorn, the player and the AFL in the form of a **Standard Player Contract** as required by the terms of a common law agreement revised from time to time and called the **C**ollective **B**argaining **A**greement pursuant to which the AFL contracts on behalf of itself and the AFL Clubs and the AFLPA on behalf of itself and the players;

(b) in 2013, Hawthorn was one the first Victorian-based AFL clubs to engage an Indigenous person to provide services as an Indigenous player development manager and welfare support of Indigenous players and to support the development of Indigenous players when Egan was engaged by Hawthorn as a contractor to provide those services;

(c) otherwise denies paragraph 31.

32. It admits paragraph 32 and says further the Code of Conduct applies to players in their conduct in public life and requires them to behave in a manner which upholds and promotes the highest standards of integrity and dignity.

33. It admits paragraph 33.

34. It admits paragraph 34.

35. It admits paragraph 35.

36. As to paragraph 36, it:

(a) admits paragraph 36(a);

(b) says that paragraph 36(b) is vague and embarrassing and liable to be struck out and under cover of that objection, denies paragraph 36(b).

37. As to paragraph 37 it:

(a) admits paragraphs 37(c) and (d);

(b) says further that Hawthorn at all material times:

(i) implemented training activities and protections to counter racism and all forms of discrimination and protection of employee wellbeing;

(ii) implemented best practice practical cultural awareness and Indigenous knowledge programs;

(iii) implemented policies and programs to ensure the environment at Hawthorn was one that was culturally safe for all Indigenous people employed by or connected with Hawthorn and that ensured Hawthorn and its employees, officers and agents were culturally aware;

(c) says that paragraph 37(e) is vague and embarrassing and liable to be struck out and under cover of objection, denies paragraph 37(e);

(d) otherwise denies paragraph 37.

37A. Further to paragraph 37:

(a) from around 2006, Hawthorn included terms in its contracts of employment requiring employees to comply with its policies that prohibited discrimination;

(b) from around 25 May 2009, Hawthorn had in force a Harassment, Discrimination & EEO Policy that expressly stated that Hawthorn condemned all forms of discrimination and harassment, including on the basis of race, and that such behaviour was unacceptable and would not be tolerated under any circumstances;

Particulars

The policy is in writing and available for inspection.

(c) from around 2009, all Hawthorn players underwent Respect and Responsibility training conducted by the AFL and AFLPA;

(d) from around September 2014, Hawthorn had in force a Harassment, Discrimination & EEO Policy that expressly stated that Hawthorn condemned all forms of discrimination and harassment, including on

the basis of race and colour, and that such behaviour was unacceptable and would not be tolerated under any circumstances;

Particulars

The policy is in writing and available for inspection.

(e) from around August 2021, Hawthorn had in force a Code of Conduct that required all employees to observe standards of behaviour, including that they observe and contribute to a non-discriminatory workplace;

Particulars

The policy is in writing and available for inspection.

(f) from around August 2021, Hawthorn had in force a Whistleblowing Policy that encourages employees to report bullying, discrimination, harassment or other forms of unacceptable workplace behaviour;

Particulars

The policy is in writing and available for inspection.

(g) from around August 2021, Hawthorn had in force a Respect and Protect Policy that stated that Hawthorn condemned all forms of discrimination and harassment, including on the basis of race and colour, and that such behaviour was unacceptable and would not be tolerated under any circumstances;

Particulars

The policy is in writing and available for inspection.

(h) since 2000, Hawthorn players have participated in the AFLPA's Indigenous Camp and AFL's Indigenous All-Star Games;

Particulars

Such players include Shaun Burgoyne (2019, 2017, 2015, 2013) (captain of the All-Star team), Jarman Impey (2019), Matthew Walker (2019), Chad Wingard (2019), Kieran Lovell (2017), Bradley Hill (2015, 2013); Jermaine Miller-Lewis (2015); Amos Frank (2013); Lance Franklin (2013); Jed Anderson (squad, 2015, 2013) Cyril Rioli (2017, 2013, 2015, 2009, 2007); Derrick Wanganeen (2013); Cameron Stokes (2009); Harry Miller (2009); Chance Bateman (2003); Mark Williams (2003).

(i) since around 2010, Hawthorn has engaged in community partnerships, including with:

(i) Big River Hawks - an under 18 football team based in Katherine, Northern Territory, who compete in the Darwin-based NTFL. Big River Hawks aim to increase Indigenous participation in study or work, using team selection as a reward;

(ii) Indigenous Auskick Exchange - in conjunction with Hawthorn Auskick Centre, Indigenous children from remote communities in the Northern Territory get the opportunity to visit Melbourne and experience the culture and unique programs that Melbourne has to offer. One aim of the program is to encourage participants to strive to better themselves, leading to healthier and stronger role models for their community;

(iii) Indigenous Literacy Foundation - provides remote communities with books to improve literacy skills of remote Indigenous populations. Programs focus on ensuring access to quality resources, including books in First Languages;

(iv) Deadly Choices - a preventative health program of the Institute for Urban Indigenous Health (IUIH). It aims to empower Aboriginal and Torres Strait Islander peoples to make healthy choices for themselves and their families;

(v) Karadi Aboriginal Corporation - an inclusive Aboriginal Community Controlled Organisation, dedicated to serving Aboriginal people and helping them achieve strong cultural identity, good health, and quality of life. Programs focus on issues such as e-safety, alcohol and drugs, and workforce development;

(vi) the Victorian Aboriginal Health Service - addresses the specific medical needs of Victorian Indigenous communities, including medical, dental and social services;

(vii) Dardi Munwurro (Strong Spirit) - a specialist Aboriginal family violence service. It provides group leadership training programs to Aboriginal men and youth;

(viii) Jawoyn Aboriginal Corporation – aims to improve the cultural, social and economic wellbeing of the Jawoyn people through its human services, land management, cultural and business enterprises;

(ix) Jilya Westerman Foundation - Jilya's vision is to reduce Indigenous suicides, build resilience and strengthen wellbeing in Indigenous Australians through leading the development of culturally and clinically informed mental health and suicide prevention responses, and increasing the number of Indigenous Psychologists working in Australia, in the highest risk regional and remote communities;

(x) Worowa Aboriginal College - a registered school based in Healesville. It provides a quality education for students in the secondary years of schooling, Years 7 – 12, for up to 70 Aboriginal girls from urban, regional and remote communities across Australia;

(xi) Harbrow Mentoring - provides a holistic range of programs to young people living in Far North Queensland and the Gold Coast, based on the three main pillars of, Mentoring, Leadership and Sports Development. Its aim is to give aspiring young people the tools to achieve most out of their life in a culturally supportive and inclusive environment;

(xii) The Red Dust Heelers - drives the disability inclusion arm of Outback Academy Australia. Red Dust Heelers Team members are Aboriginal and other Australians with disability. The Red Dust Heelers promote and encourage through their community engagement programs, innovative and practical tools for greater inclusion and opportunities across all areas of life. They use parasports to engage with communities, business,

government and services to '*think outside the square*' when opening doors to people with disability;

(xiii) Beyond Blue - one of Australia's most well-known mental health organisations. The organisation provides access to information, advice and support on mental health;

(xiv) Headspace (Katherine) - provides advice and support for young people aged 12 to 25 in the Katherine and Big Rivers region. It offers support across four key areas: mental health, physical and sexual health, alcohol and other drugs, and work and study;

(xv) SALT (Sports and Life Training) - delivers quality wellbeing, culture and leadership education sessions to young Australians in sporting clubs. They believe that sporting clubs are the hub of community throughout Australia and provide the perfect network to facilitate sustainable cultural change;

(xvi) the School Attendance Program - a reward and recognition driver run in the Katherine region to increase school attendance rates of young people in the Northern Territory. The program is run through incentives for students who attend at least 80% of classes each term. Successful students are sent Hawthorn merchandise as encouragement to continue to consistently attend school;

(xvii) the FRIENDS Resilience Program - a suite of Australian-developed, cognitive behaviour therapy-based programs designed to build life-long resilience in individuals, families, schools and communities;

(xviii) Common Ground - a First Nations not-for-profit organisation working to shape a society that centres First Nations people by amplifying knowledge, cultures and stories. The organisation is focused on creating change in the education system and the legal system and creates resources for schools, runs campaigns and backs advocacy work;

(xix) Indigenous Elders in relation to Welcome to Country, providing strategic advice to Hawthorn and guidance;

(xx) various artists for art associated with guernseys (Sir Doug Nicholls Round, AFLW Indigenous Round, program logos and Deadly Choices), art installations at Bunjil Bagora, Reconciliation Action Plan Artwork, art workshops for staff, players and members;

(xxi) performers, including Koori youth such as Will Shakespears, Djirri Djirri, Kiernan Ironfield (yidaki performer), Chanile Chandler, Ron Murray, Graham Briggs, Ray Marama, Dewayne Everettsmith, Pirritu, Deni, Monica Karo, Talia Liddle and Brothersinarms Dance Crew;

(xxii) for gift exchange programs for AFL, AFLW, VFL, VFLW, Wheelchair AFL and AFL Blind Indigenous Rounds;

(j) from around 2012, Hawthorn has conducted cultural awareness training;

Particulars

The training is conducted in person.

(k) since around 2013, Hawthorn has engaged Indigenous people to perform the roles of Indigenous Liaison Officer and Indigenous Player Development Manager to support Indigenous players, Indigenous Community Liaison Officer to support connection with the Indigenous community and Indigenous Adviser to support all Indigenous players and staff;

Particulars

Leon Egan, Angela Burt, Shaun Burgoyne, Brady Gray, Jaylon Thorpe, Braidyn Dunford, Jack Sampi and Jamie Bennell have all held these roles.

(l) since around 2013, Hawthorn has engaged Indigenous people to act as host families to provide accommodation for Indigenous players relocating to Melbourne when drafted;

(m) in or around 2018, Hawthorn commenced implementation of its first Reconciliation Action Plan;

Particulars

Reconciliation Action Plan is in writing and available for inspection.

(n) from around 2014, Hawthorn conducted inductions for Hawthorn employees;

Particulars

The induction process was conducted online and in person. The inductions included components on equal employment opportunity and discrimination, including because of race. From 2016, as part of induction for new employees, such employees were required to complete six training modules covering sexual harassment, bullying, occupational health & safety, equal employment opportunity, electronic communication & social media and privacy. Since 2021, the induction program for non-football employees has beenconducted by the People and Culture Department and for football department staff by the Player Development Managers.

(o) from around 2023, Hawthorn conducted Respect and Protect Training for all Hawthorn employees;

Particulars

The Respect and Protect Training was conducted online and in person. For non-football employees the Respect and Protect Training program was conducted by the People and Culture Department and for football department staff by the Player Development Managers.

(p) in 2024, Hawthorn introduced the role of Head of Indigenous Affairs, filled by an Indigenous person (initially, Jamie Bennell) responsible for, among other things, reviewing policies and procedures to ensure cultural appropriateness, advising People and Culture, assisting with

Indigenous talent identification, mentoring junior First Nations' employees and advising on Reconciliation Action Plan initiatives;

(q) at various times, it has engaged in cultural immersion programs, including:

(i) since 2009, annual visits (other than in 2020 and 2021 due to travel restrictions related to the pandemic) and participation in the following activities:

(i) Big Rivers Community Camp for players and staff:

A to take part in Welcome to Country;

B visits to remote communities Barunga, Beswick and Pidgeon Hole;

C participating in Jawoyn Cultural Immersion workshops;

D School Attendance Programs in schools;

E Deadly Choices health clinic;

F Top Didj Cultural Experience with Manuel Pamkal;

G Headspace Katherine connection with Elders from across the region;

(ii) since 2021, annual visits to the Cairns Cultural Camp, including:

A Yirrganydji Welcome to Country;

B Yarrabah Community;

C Cultural Education sessions with Harbrow Mentoring;

D Yirrganydji on country tour;

E Yule Point low tide walk, spearing, hunting and gathering, traditional food tasting;

F Cape York House.

37B Further and in the alternative:

(a) if any act alleged against an employee or agent of Hawthorn involved a contravention of the RD Act as set out in the SOC (which is denied);

(b) if any act referred to in (a) above was done as an act in connection with their duties as an employee or agent of Hawthorn (which is denied);

(c) any act referred to in (a) and/or (b) does not render Hawthorn vicariously liable for such alleged acts under the RD Act because by reason of one or more of the matters in paragraphs 37 and 37A above, at all material times, Hawthorn took "*all reasonable steps*" within the meaning of s. 18A(2) of the RD Act, to prevent those alleged acts from occurring (the **Reasonable Steps to Prevent Discriminatory Conduct**).

B.3 Hawthorn's conduct in respect of Peterson

38. As to paragraph 38, save that it admits paragraph 38(b), it denies paragraph 38 and says:

(a) Peterson was selected by Hawthorn with pick 61 of the 2008 national rookie draft;

(b) Peterson was engaged pursuant to the terms of the Standard Player Contract and subject to the terms of the relevant CBA;

(c) It otherwise refers to and relies on the matters in paragraph 1 above (the **Peterson Matters**).

39. It admits paragraph 39 and otherwise refers to and relies on the Peterson Matters.

40. It admits paragraph 40.

41. It denies paragraph 41 and says further that as a rookie draftee Peterson was employed on a Standard Player Contract and his terms of employment for the first two years of his employment were governed by it and the CBA.

42. It denies paragraph 42 and otherwise refers to and relies on the Peterson Matters.

43. It does not know and cannot admit paragraph 43.

44. As to paragraph 44, it says as follows:

    (a) from time to time, Burt spoke to Peterson about him taking drugs and his level of consumption of alcohol;

    (b) clause 5 of the Code of Conduct provides that AFL Players must refrain from the taking of illicit and/or performance-enhancing substances and must comply with AFL Rules and the AFL Anti-Doping Code which prohibits the taking of such substances;

    (c) Burt provided Peterson with ongoing support in managing his finances;

    (d) Hawthorn made advance wage payments to Peterson so he could meet his living expenses, pay outstanding fines, and for the purchase of a car;

Particulars

Email from Burt to Rebecca Simmons and Tim Silvers (Hawthorn finance employees) dated 11 May 2009.

Email from Burt to Evans dated 12 May 2011.

    (e) Burt assisted Peterson to consolidate his various identities, being Carl Peterson, Carl Petterson, and Carl McNeill, in which Peterson had incurred debts;

    (f) from about March 2009, Rotumah contacted Burt to express her concerns about Peterson's drug use;

    (g) it otherwise denies paragraph 44.

45. It denies paragraph 45 and says further that in around April 2010, Hawthorn arranged relationship counselling to be provided to Peterson and Rotumah by

Kaa & Associates to prevent Rotumah leaving Peterson which was paid for by the AFLPA.

Particulars

Email from Burt to Kaa & Associates dated 22 April 2010.

46. It denies paragraph 46.

47. It does not know and cannot admit paragraph 47.

48. It admits paragraph 48 and says further that Peterson informed Burt of Rotumah's pregnancy in late July or early August 2009.

49. It denies paragraph 49 and further denies that any meeting with the coaches occurred after Peterson informed Burt that Rotumah was pregnant and otherwise refers to and relies on paragraphs 1(r) to 1(s) of the Peterson Matters.

50. It denies paragraph 50 and further denies that any meeting with the coaches occurred after Peterson informed Burt that Rotumah was pregnant and otherwise refers to and relies on paragraphs 1(r) to 1(s) of the Peterson Matters.

51. It denies paragraph 51 and further denies that any meeting with the coaches occurred after Peterson informed Burt that Rotumah was pregnant and otherwise refers to and relies on paragraphs 1(r) to 1(s) of the Peterson Matters.

52. It denies paragraph 52 and further denies that any meeting with the coaches occurred after Peterson informed Burt that Rotumah was pregnant and otherwise refers to and relies on paragraphs 1(r) to 1(s) of the Peterson Matters.

53. As to paragraph 53 it:

    (a) denies that any meeting with the coaches occurred after Peterson informed Burt that Rotumah was pregnant;

    (b) refers to and relies on paragraphs 1(r) to 1(s) of the Peterson Matters;

(c) does not know and cannot admit if Peterson told Rotumah that he could not be with her anymore and that it was not a good idea that she have the baby;

(d) otherwise denies paragraph 53.

54. It denies paragraph 54.

55. It denies paragraph 55.

56. It denies paragraph 56.

57. It denies paragraph 57.

58. It denies paragraph 58.

59. It denies paragraph 59.

60. Save that it admits that Burt and Flood met with Rotumah at Birdy Num Num's café in Carlton shortly after Peterson returned from Perth in June 2009 to inform Rotumah that Peterson had decided to stay with Flood due to the events referred to in paragraph 1(o) of the Peterson Matters when he returned from Perth, it otherwise denies paragraph 60.

61. It admits paragraph 61.

62. It admits paragraph 62 and says further that after Peterson and Rotumah resumed their relationship, Peterson continued to live with Flood.

63. It denies paragraph 63 and says further that Burt assisted Peterson and Rotumah to find a rental property in Templestowe, closer to Hawthorn's training facility than Rotumah's house because Peterson was often late to training and was having difficulties with the travel, and Peterson otherwise continued to live with Flood as and when it suited him after Peterson and Rotumah moved to Templestowe.

64. It denies paragraph 64 and refers to and relies on paragraph 63 above.

65. Save that it does not know and cannot admit paragraph 65(b), it admits paragraph 65.

66. It admits paragraph 66.

67. Save that it admits that after Peterson's son was born Clarkson visited him with a gift, it denies paragraph 67.

68. It admits paragraph 68 and says further that a factor involved in Peterson subsequently being delisted in October 2010 was that he was withdrawn from playing an elimination final in Perth after Rotumah informed Burt that Peterson had taken marijuana earlier in the week.

69. Save that it does not know and cannot admit whether Flood or Fagan were present at a meeting where Peterson was told that he was delisted it admits paragraph 69.

70. As to paragraph 70 it:

    (a) admits that in about July 2019, Peterson took his stepson, his two sons, and Rotumah's younger brother to visit Hawthorn's training facilities;

    (b) admits that Peterson and his family met Clarkson during the visit;

    (c) says further that after the visit, Peterson emailed Angela Burt, Hawthorn's Indigenous Liaison Manager, Kennett and then CEO, Justin **Reeves,** thanking them for the tour and informing Hawthorn of how much his children had enjoyed the visit;

Particulars

The email was from Peterson and stated:

Morning Justin,

Thanks so much for the visit to the club. it was great that I could show the kids the old office and hopefully the older boys get something out of it as they are at the stage of playing rep ball and rep footy. I really appreciate it and hopefully we will meet again soon, Hopefully when you come to play in WA to play west coast in the last round.

Thanks again my kids loved it.

Regards

Carl Peterson

(d) says further that in August 2019, Peterson emailed Kennett requesting four tickets for a Hawthorn game being played in Perth and was gifted those tickets by Hawthorn;

Particulars

Emails from Peterson to Kennett, Reeves and Angela Burt between 16 and 22 July 2019. Emails from Peterson to Kennett dated 22 August 2019.

(f) otherwise denies paragraph 70.

B.4 Hawthorn's conduct in respect of Rioli and Ah Sam-Rioli

71. It admits paragraph 71 and otherwise refers to and relies on paragraphs 2(a) to 2(d) of the Rioli Matters.

72. As to paragraph 72 it:

(a) does not know and cannot admit paragraph 72(a);

(b) refers to and relies on paragraphs 2(a) to 2(c) of the Rioli Matters;

(c) denies paragraph 72(b) and otherwise refers to and relies on paragraph 2(h) of the Rioli Matters.

73. As to paragraph 73, it:

(a) says Clarkson called Rioli and some other players "*Humphrey B Bear*";

(b) says further that the distinguishing feature of *Humphrey B Bear* was that he did not speak and that was the reason Clarkson called Rioli and some other players "*Humphrey B Bear*";

(c) says further that Clarkson said to many players words to the effect that they needed to speak and communicate with their teammates on and off the field and not "*be Humphrey B Bear*";

(d) otherwise denies paragraph 73.

74. Paragraph 74 is vague and embarrassing and liable to be struck out and under cover of that objection, it denies paragraph 74.

75. Paragraph 75 is vague and embarrassing and impermissibly rolled up and under cover of that objection, it denies paragraph 75.

76. It admits that in mid-November 2011, Rioli was in Darwin and otherwise does not know and cannot admit paragraph 76.

77. Save that it does not know and cannot admit paragraph 77(d) or (e), it admits paragraph 77.

78. Paragraph 78 is vague and embarrassing and impermissibly rolled up. Under cover of that objection, it does not know and cannot admit any of the matters in paragraph 78, including when or if Rioli told Ah Sam-Rioli any of the matters admitted by Hawthorn in respect of paragraph 77.

79. It admits paragraph 79 and says further:

    (a) in 2010, Jed **Anderson** was picked for the Greater Western Sydney scholarship program and moved to Sydney on a boarding scholarship to Saint Ignatius' College, Riverview;

    (b) Anderson was selected in the 2011 All-Australian under-18 team;

    (c) in late 2012, Anderson was 18 years of age and was delisted by Greater Western Sydney and traded to Hawthorn;

    (d) Anderson's girlfriend, Nicky **Cotis**, was pregnant when Anderson was drafted by Hawthorn and planned to remain in Darwin with her family until the baby was born;

    (e) Rioli agreed with Hawthorn that Anderson could stay with him for the 2-to-3-week period after he was drafted before attending the pre-season training camp in Mooloolaba after which time Anderson would return to Darwin until January 2013.

80. It admits paragraph 80 and says further:

    (a) Rioli was unaware of Cotis's plans to come to Melbourne to stay with Anderson; and

(b) Rioli spoke to Burt in his office when Cotis arrived and told him that he was confused by Cotis arriving as he had not agreed to have Cotis stay with him.

81. It denies paragraph 81 and says that Burt and Clarkson attended Rioli's home to assist Rioli and otherwise refers to and relies on paragraph 80 above.

82. As to paragraph 82 it:

(a) admits that Clarkson participated in a conversation about Cotis' return to Darwin to give birth;

(b) refers to and relies on paragraph 80 above;

(c) otherwise denies paragraph 82.

83. It admits paragraph 83 and otherwise refers to and relies on paragraph 80 above.

84. It admits paragraph 84.

85. It denies paragraph 85.

86. It denies paragraph 86 and says further that Burt informed Ah Sam-Rioli that Egan was engaged to provide cultural awareness training at Hawthorn.

87. It denies paragraph 87 and otherwise refers to and relies on paragraph 86 above.

88. As to paragraph 88 it:

(a) admits paragraph 88(a);

(b) as to paragraph 88(b), it does not know and cannot admit what Bradley **Hill** told Rioli or Ah Sam-Rioli;

(c) does not know and cannot admit paragraph 88(c);

(d) denies paragraph 80(d);

(e) says further that Jarryd **Roughead** (then a member of the team's leadership group) overheard the comment and immediately:

(i) told Grant **Birchall** that the term he had used was offensive and totally inappropriate;

(ii) comforted Hill;

(iii) facilitated Birchall apologising to Hill;

(f) says further in respect of Roughead that:

(i) he considered the issue had been dealt with satisfactorily on the spot;

(ii) he believed Hill considered the matter had been satisfactorily dealt with;

(iii) he understood that no issues arose between Birchall and Hill afterwards;

(iv) he understood that Birchall did not use similar language again.

89. Paragraph 89 is vague and embarrassing, lacks the necessary particulars and is liable to be struck out. Under cover of that objection:

(a) as to paragraphs 89(a) and (b), it does not know and cannot admit what Rioli and Ah Sam-Rioli felt;

(b) as to paragraph 89(c), it does not know and cannot admit if Ah Sam-Rioli participated in so-called "*WAGs*" (wives and girlfriends) events but says further that she did participate in chat groups for WAGs;

(c) it does not know and cannot admit the matters in paragraph 89(d);

(d) it denies paragraph 89(e);

(e) as to paragraph 89(f), it admits that Rioli would not leave Ah Sam-Rioli alone for long at Hawthorn events, including after games, and says that Rioli told his teammates that he could not leave Ah Sam-Rioli alone after he and Ah Sam-Rioli had relationship issues that led to their separation in 2010 and otherwise denies paragraph 89(f).

90. It does not know and cannot admit paragraph 90 and says further that wrist bands at that point in time were usually checked by a volunteer member of Hawthorn and not an employee.

91. It does not know and cannot admit paragraph 91.

92. It admits paragraph 92.

93. As to paragraph 93 it:

    (a) admits that Clarkson attended the Alice Springs hospital where Rioli's father was located;

    (b) says further than around two weeks later, Clarkson, Matthews and Brendan Whitecross visited Rioli's father in an Adelaide hospital where he had been moved from Alice Springs;

    (c) otherwise denies paragraph 93.

94. It admits paragraph 94.

95. It does not know and cannot admit paragraph 95.

96. It admits paragraph 96 and says further Kennett's comments to Ah Sam-Rioli were the same comments that Kennett had made to a number of non-Indigenous people who wore ripped jeans, and the comments were an attempt at humour and were not motivated by race and otherwise refers to and relies on paragraphs 2(n) to (y) of the Rioli Matters.

97. It admits paragraph 97.

98. As to paragraph 98 it:

    (a) admits that on 6 June 2018, Rioli did not attend training and told Matthews that he intended to return to Darwin;

    (b) refers to and relies on paragraphs 2(n) to (y) of the Rioli Matters;

    (c) otherwise denies paragraph 98.

99. It admits paragraph 99.

100. It denies paragraph 100.

101. As to paragraph 101:

(a) it admits that Clarkson telephoned Ah Sam-Rioli's mother and spoke to her younger sister, Jordan, and asked her to travel to Melbourne to provide welfare and support to Rioli and Ms Ah Sam-Rioli;

(b) it otherwise denies paragraph 101.

102. It does not know and cannot admit paragraph 102.

103. It admits paragraph 103 and says further that the words in paragraph 103(b) were said in response to Ah Sam-Rioli stating in the meeting that she refused to accept the apologies given by Kennett in person, by text or in writing.

104. Save that it admits that Rioli decided to retire from football, it says further that paragraph 104 is vague and embarrassing, to the extent that it refers to a culturally unsafe environment and is liable to be struck out and under cover of that objection, it otherwise denies paragraph 104.

105. It admits paragraph 105 and says further that Rioli was aware that the image was being used and did not at any time raise any objection to the use of his image.

106. It denies paragraph 106.

B.5 Hawthorn's conduct in respect of Miller-Lewis and Lewis

107. It admits paragraph 107 and otherwise refers to and relies on paragraph 5 above (the **Miller-Lewis Matters**).

108. It admits paragraph 108 and otherwise refers to and relies on the Miller-Lewis Matters.

109. Save that it does not know and cannot admit the due date of Lewis's pregnancy, it admits paragraph 109 and says further, Lewis and Miller-Lewis's child, Aryana, was born on or around 22 January 2015.

110. It denies paragraph 110 and says further that Miller-Lewis first disclosed Lewis's pregnancy to Burt during the training camp held in Mooloolaba in mid-

December 2014, after Miller-Lewis had already spent approximately two weeks training with Hawthorn in Melbourne.

111. It denies paragraph 111 and otherwise refers to and relies upon paragraph 110 above.

112. Save that it does not know and cannot admit paragraph 112(c), it admits paragraph 112.

113. Save that it admits that Miller-Lewis had not previously lived away from his family and had no family in Melbourne, it denies paragraph 113 and says further:

    (a) Hawthorn arranged for Miller-Lewis to live with Egan, an Indigenous man who was also contracted by Hawthorn through his employer, AFL Sports Ready, to provide cultural and welfare support to Indigenous players, in order to provide support to Miller-Lewis;

    (b) Miller-Lewis nominated for the AFL draft in full knowledge that he was likely to have to move away from home to pursue an AFL career;

    (c) Miller-Lewis was interviewed by Egan in September 2014 about the prospect of being drafted to Hawthorn and expressed a view that he wanted to be drafted to Hawthorn knowing that he would need to relocate to Melbourne and thus, be away from his family;

    (d) Miller-Lewis did not have to accept Hawthorn's selection of him in the draft and move to Melbourne but did so voluntarily because he wanted to play AFL football for Hawthorn.

114. It does not know and cannot admit what Miller-Lewis understood and believed as alleged in paragraph 114.

115. As to paragraph 115, it says that:

    (a) on 18 January 2015, on the encouragement of Matthews and Burt, Miller-Lewis flew to Perth in order to be present for the birth of his child, Aryana;

(b) Hawthorn provided Miller-Lewis with leave in order for him to travel to Perth to be with Lewis for the birth of Aryana;

(c) Hawthorn paid for Miller-Lewis' flights to and from Perth in accordance with the terms of the 2012-2016 CBA;

(d) it otherwise denies paragraph 115.

116. It admits paragraph 116.

117. It denies paragraph 117 and otherwise refers to and relies on paragraph 115 above.

118. It denies paragraph 118 and:

(a) says further that Miller-Lewis returned to Melbourne from Perth on 26 January 2015;

(b) otherwise refers to and relies on paragraph 115 above.

119. It does not know and cannot admit paragraph 119.

120. It does not know and cannot admit paragraph 120 and says further:

(a) in February 2015, Miller-Lewis was invited by the AFL to attend the AFLPA Indigenous Camp, which was scheduled to take place to coincide with the AFL Indigenous All-Stars game in Perth;

(b) Matthews arranged for Miller-Lewis to spend additional time in Perth before and after the AFLPA Indigenous Camp and AFL Indigenous All-Stars game to enable him to spend time with his family;

(c) from around 20 to 23 March 2015, Miller-Lewis returned to Perth to spend time with Lewis and Aryana;

Particulars

Email dated 11 March 2015 from Matthews to Daniel Napoli.

(d) from 27 to 29 March 2015, Miller-Lewis's mother, Ms **Teresa Miller**, and two of Miller-Lewis's siblings, travelled from Perth to Melbourne to participate in Hawthorn's family induction weekend.

Particulars

Hawthorn paid for and organised Teresa Miller and her two children's return flights to and from Melbourne, and their accommodation for the period 27 to 29 March 2015.

The travel itinerary and ticket dated 27 March 2015 are contained in an email from Matthews to Teresa Miller dated 17 March 2015.

121. It does not know and cannot admit paragraph 121 and otherwise refers to and relies on paragraph 120 above.

122. It denies paragraph 122.

123. Paragraph 123 is vague and embarrassing and liable to be struck out. Under cover of that objection, it does not know and cannot admit paragraph 123 and otherwise refers to and relies on paragraph 115 above.

124. It admits paragraph 124 and says further:

(a) Miller-Lewis was invited by the AFL to attend the AFLPA Indigenous Camp, which was scheduled to take place to coincide with the AFL Indigenous All-Stars game in Perth;

(b) Miller-Lewis was not required to attend the AFLPA Indigenous Camp, but accepted the AFL's invitation to attend;

(c) the AFL organised the schedule and accommodation for players attending the AFLPA Indigenous Camp and Hawthorn had no control over those matters.

125. It admits paragraph 125 and says further that Hawthorn made arrangements for Miller-Lewis to spend time in Perth before and after the AFL Indigenous All-Stars game and associated AFLPA Indigenous Camp.

126. It denies paragraph 126 and otherwise refers to and relies on paragraph 124 above.

127. Save that it denies that any conduct of Miller-Lewis was in defiance of the position expressed by Matthews, it does not know and cannot admit paragraph 127.

128. It denies paragraph 128.

129. It denies paragraph 129 and says further:

(a) Miller-Lewis did not need permission from Hawthorn for Lewis and Aryana to travel to Melbourne or for where Lewis and Aryana lived;

(b) Lewis had no contractual or other obligations to Hawthorn;

(c) Miller-Lewis had contractual or other obligations to Hawthorn pursuant to his employment agreement, including an obligation to notify Hawthorn of his whereabouts for the purposes of his and Hawthorn's compliance with the AFL's Anti-Doping Code;

(d) pursuant to the terms of the CBA as a first-year rookie player, Miller-Lewis was entitled to ten economy flights per year, two for himself, and eight for his family, to be paid for by Hawthorn and had used four of those flights by March 2015;

(e) there was no restriction on Miller-Lewis and Lewis booking and paying for additional flights for Lewis and Aryana and they did not need permission from Hawthorn to do so.

130. It does not know and cannot admit paragraph 130.

131. It denies paragraph 131 and says further that Miller-Lewis did not need permission from Hawthorn for Lewis and Aryana to travel to Melbourne or to decide where Lewis and Aryana lived and otherwise refers to and relies on paragraph 129 above.

132. It denies paragraph 132 and otherwise refers to and relies on paragraph 129 above.

133. It denies paragraph 133 and otherwise refers to and relies on paragraphs 113 and 129 above.

134. It does not know and cannot admit paragraph 134 and says further that as a first-year rookie player Miller-Lewis' terms of employment were contained in the 2012-2016 CBA and his Standard Player Contract.

135. It does not know and cannot admit paragraph 135 and says further that Miller-Lewis did not alert Hawthorn to any supports that he wanted or that were suggested by Chris Lewis.

136. Save that it admits that Burt informed Miller-Lewis that as a first-year rookie player the terms of his employment were contained in the 2012-2016 CBA and his Standard Player Contract, it otherwise denies paragraph 136.

137. It denies paragraph 137 and says further that in or around September 2015, Miller-Lewis appointed Ben Williams as his player manager after being introduced to Ben Williams by Shaun **Burgoyne**.

Particulars

Email dated 21 September 2015 from Matthews to Graham Wright, Fagan, Burt and others.

138. It denies paragraph 138 and otherwise refers to and relies on paragraph 129 above and says further that Lewis contacted Matthews to seek that Hawthorn book and pay for her and Aryana's flights.

139. It denies paragraph 139 and otherwise refers to and relies on paragraph 129 above.

140. It admits paragraph 140 and says further that Hawthorn paid for the flights using up two of Miller-Lewis' remaining flights to which he was entitled under the 2012-2016 CBA.

141. As to paragraph 141 it:

(a) admits paragraph 141(a);

(b) does not know and cannot admit paragraph 141(b);

(c) otherwise denies paragraph 141;

(d) says further:

(i) including the flights taken by Miller-Lewis to Perth in January and March 2015, and the flights for Teresa Miller and two of Miller-Lewis' siblings, the flights booked and paid for by Hawthorn meant that Miller-Lewis had exhausted his eight

family flights for the year for which Hawthorn was permitted to pay;

(ii) Matthews and Burt expressed to Miller-Lewis a concern that if Lewis did not get on her flight, he might forgo that flight entitlement if the flight could not be changed without a further fare being purchased;

(iii) at Miller-Lewis' request, Lewis and Aryana's flight was rescheduled to the following day.

142. It denies paragraph 142.

143. It denies paragraph 143.

144. Save that it denies that any meeting occurred with Burt or Matthews as alleged in paragraph 143, as to paragraph 144 it:

(a) does not know and cannot admit paragraph 144(a);

(b) says further that employees at Hawthorn observed that Miller-Lewis was very upset in April 2016 when his grandfather died and Matthews alerted Miller-Lewis to the AFLPA services and provided the contact details for the AFLPA, including psychologists;

(c) says further that Anthony Klarica was engaged as an independent contractor from in or around 2008 to 2015 to provide sports performance psychology services to Hawthorn;

(d) says further in 2016, Hawthorn engaged Chris Byrne in the welfare department as a sports counsellor and player development manager;

(e) does not know and cannot admit paragraph 144(b);

(f) does not know and cannot admit paragraph 144(e) and says further that Hawthorn was not provided any information regarding any treatment of Miller-Lewis by Dean Janover; and

(g) otherwise denies paragraph 144.

145. It admits paragraph 145.

146. It does not know and cannot admit paragraph 146.

147. It denies paragraph 147 and says further:

(a) on 15 April 2016, Lewis emailed Matthews thanking him for his assistance in organising flights for Aryana and her;

Particulars

Email from Lewis to Matthews dated 15 April 2016.

(b) from 17 to 20 April 2016, Miller-Lewis, Lewis and Aryana travelled to Perth to visit Miller-Lewis' grandfather;

Particulars

Hawthorn paid the upfront cost of Miller-Lewis, Lewis and Aryana's flights to and from Perth but required Miller-Lewis to repay those costs to Hawthorn out of his May and June 2016 payments.

Miller-Lewis had exhausted his entitlements for Hawthorn funded flights and accommodation.

The travel itinerary and ticket dated 17 April 2016 are contained in an email from Matthews to Miller-Lewis and Lewis dated 15 April 2016.

148. It does not know and cannot admit paragraph 148.

149. It does not know and cannot admit paragraph 149.

150. It denies paragraph 150 and says further that Miller-Lewis and Lewis did return to Melbourne on 20 April 2016 in accordance with the flights Lewis requested Matthews book for them.

151. As to paragraph 151 it:

(a) does not know and cannot admit what cultural ceremonies or practices Miller-Lewis was unable to participate in in respect of the death of his grandfather;

(b) says further that Miller-Lewis did not request additional leave to attend any cultural ceremonies or practices in respect of the death of his grandfather;

(c) otherwise denies paragraph 151.

152. Save that Miller-Lewis and Lewis did not inform Hawthorn they were expecting a second child in August 2016, it does not know and cannot admit paragraph 152.

153. Paragraph 153 is vague and embarrassing and liable to be struck out. Under cover of that objection it:

(a) admits that certain Hawthorn events may have occurred in a restaurant or pub, including club promotional events;

(b) says further that pursuant to the Code of Conduct, the AFL requires players to attend AFL, club and promotional events (clause 4.4) and functions (clause 4.3), including:

(i) authorised after-Match functions;

(ii) AFL Brownlow Medal dinner;

(iii) AFL Club annual presentations of guernseys;

(iv) AFL Club "*best and fairest*" functions;

(v) AFL Club annual general meeting/s;

(vi) AFL Club player orientation/family days, or other similar functions;

(vii) AFL Club balls;

(viii) authorised autograph sessions;

(ix) other authorised AFL, AFL Club and AFLPA functions;

(c) does not know and cannot admit whether Miller-Lewis was anxious about the event alleged because of past trauma around events involving alcohol, whether Lewis drove him to the event or whether Miller-Lewis left the event early;

(d) otherwise denies paragraph 153.

154. It denies paragraph 154.

155. As to paragraph 155:

(a) save that it admits that Clarkson nicknamed Miller-Lewis "*JJ*" it does not know and cannot admit paragraph 155(a);

(b) it otherwise denies paragraph 155.

156. It admits paragraph 156.

157. As to paragraph 157 it says:

(a) Miller-Lewis was informed of his delisting at the meeting with Clarkson and Burt;

(b) it otherwise denies paragraph 157.

158. Save that it admits that Matthews provided Miller-Lewis with information regarding the support services available to him on delisting, it denies paragraph 158.

159. It denies paragraph 159 and otherwise refers to and relies on paragraphs 5(q) to (z) of the Miller-Lewis Matters.

160. It admits paragraph 160.

161. It admits paragraph 161 and says further that Miller-Lewis gave Hawthorn the artwork as a gift and the painting was unveiled on 23 May 2016 during the Sir Doug Nicholls Round.

162. As to paragraph 162 it:

(a) admits paragraph 162(a) and otherwise refers to and relies on paragraph 161 above;

(b) denies paragraph 162(b) and says further that when telephoned by Lewis in or around 2021, Matthews asked Lewis if Miller-Lewis wanted the painting returned to him, and that if so, it would be returned and neither Lewis nor Miller-Lewis followed up Matthews as to whether Miller-Lewis wanted the painting to be returned or not returned;

(c) denies paragraph 162(c) and says that:

(i) in 2022, Lewis telephoned Matthews and asked for the return of Miller-Lewis' painting and in response, Matthews immediately arranged to have the painting packaged and within two weeks organised a courier to transport the painting to Western Australia safely;

(ii) following delivery of the painting Lewis and Miller-Lewis expressed their gratitude for its safe return and sent Matthews photographs of Miller-Lewis with the painting by text message.

Particulars

The text messages were sent to Matthews.

B.6 Hawthorn's conduct in respect of Egan

163. It admits paragraph 163.

164. It admits paragraph 164.

165. Save that it admits paragraph 165(a), it denies paragraph 165 and otherwise refers to and relies upon the matters in paragraph 8 above (the **Egan Matters**).

166. As to paragraph 166 it says:

(a) the role of a host family was a volunteer duty performed by Egan and his wife for a number of years and many other families connected to Hawthorn;

(b) the Hawthorn players who resided with Egan and his wife paid Egan and his wife for the accommodation, utilities and meals provided by Egan and his wife;

(c) Egan's role as a host to some of Hawthorn's indigenous players was not part of his duties or connected to his engagement with Hawthorn;

(d) It otherwise denies paragraph 166.

167. Save that Egan regularly requested that the contractor role be expanded to become a fulltime direct employment role, it denies paragraph 167.

168. It admits paragraph 168 and says further that Egan was never an employee of Hawthorn.

169. It denies paragraph 169 and says further that:

(a) Egan's role was the equivalent of what is now known as an Indigenous Player Development Manager;

(b) Burt was employed as the Player Development Manager from December 2006 at Hawthorn on a full-time basis until 2014 when he became the Head of Player Services and Football Administration;

(c) at all times from December 2006, Hawthorn employed Player Development Managers, including Matthews, from November 2014 to July 2017, to assist all players.

170. As to paragraph 170 it:

(a) says that Egan was never an employee of Hawthorn;

(b) says that the contract of service that Egan was engaged on required that he provide services of management and monitoring of the current welfare of Indigenous players and to support the development of Indigenous players;

(c) denies paragraph 170(c) and says further that neither Derrick **Wanganeen** nor Amos Frank sought greater access to the services provided by Egan;

(d) denies paragraph 170(d) and says further that Egan continued to conduct cultural awareness training after 2015;

(e) denies paragraph 170(e) and says that progress reports sent to the Epic Good Foundation were not relevant to the services provided by Egan;

(f) says that 170(f) is vague and embarrassing and liable to be struck out;

(g) denies paragraph 170(h) and says further that Egan interacted with Clarkson and Fagan regularly, including as pleaded in paragraph 177 of the SOC when Clarkson attended Egan's home in 2015;

(h) otherwise denies paragraph 170.

171. It admits paragraph 171.

172. It admits paragraph 172.

173. As to paragraph 173 it:

(a) denies paragraph 173(a)(i);

(b) does not know and cannot admit what Rioli, Burgoyne, Anderson and Hill said to Egan as alleged in paragraph 173(a)(ii);

(c) denies paragraph 173(b);

(d) admits that on 23 May 2015, no public statement was issued by the CEO or President of Hawthorn;

(e) otherwise denies paragraph 173.

174. It admits paragraph 174.

175. It does not know and cannot admit what Rioli, Burgoyne, Anderson, Wanganeen and Hill said to Egan (if anything) or what their intentions were as alleged in paragraph 175.

176. Save that on or around 27 May 2015, Rioli, Burgoyne, Anderson, Hill and Miller-Lewis attended Egan's home, it does not know and cannot admit paragraph 176.

177. Save that Clarkson attended a meeting with Rioli, Burgoyne, Anderson, Hill and Miller-Lewis at Egan's home, it denies paragraph 177.

178. It says paragraph 178 is vague and embarrassing and liable to be struck out. Under cover of that objection, it denies paragraph 178.

179. It denies paragraph 179 and says:

(a) the communication in paragraph 179(a) was by email from Egan to Matthews and in paragraphs 179(b) and (c), the communications were by email between Egan and Burt;

(b) and in response to Egan's comment that, "*I thought I was a part of the family*", Burt replied "*Haha….you are but the AFL don't care!".*

Particulars

The emails were between Egan, Matthews and Burt are dated 29 September 2015.

180. It denies paragraph 180 and says that:

(a) Egan was not an employee of Hawthorn, but was an independent contractor through AFL Sports Ready;

(b) on 23 December 2015, Egan notified Burt of his decision to cease his engagement with Hawthorn with effect from 18 December 2015.

Particulars

Email from Egan to Burt dated 23 December 2015.

B.7 Hawthorn's subsequent conduct

181. It admits paragraph 181.

182. It admits paragraph 182.

183. Save that it admits paragraph 183(d), it denies paragraph 183 and says further that Hawthorn received the Binmada report in September 2022.

184. It admits paragraph 184 and says that on or around 20 September 2022, the ABC published an article which included details of the Binmada report findings and evidence and in response to questions from the ABC prior to publication of that article, Hawthorn made a public statement which it published on its website on 21 September 2022.

Particulars

The statement in part read:

"*Earlier this year the Hawthorn Football Club engaged external First Nations consultants to liaise with current and former First Nations players and staff to learn more about their experience at the club," ……*

This important work has raised disturbing historical allegations that require further investigation. Upon learning of these allegations, the club immediately engaged AFL Integrity as is appropriate.

The club will continue to provide support to those who have participated in this process, and their wellbeing remains our priority.

While the process indicated the current environment at the club is culturally safe, it also recommended that some of the club's current First Nations training and development programs should continue to be strengthened."

185. It admits paragraph 185.

186. It admits paragraph 186 and says further that the AFL Investigation Panel was terminated with no adverse findings made in respect of the allegations raised with the Investigation Panel.

187. It declines to plead to paragraph 187 as it contains no allegations against it.

188. It declines to plead to paragraph 188 as it contains no allegations against it.

189. It declines to plead to paragraph 189 as it contains no allegations against it.

190. It admits paragraph 190.

Particulars

The statement read:

"*Hawthorn Football Club welcomes the decision by the AFL to end the Independent Panel process, reach an agreement with the complainants and make no adverse finding against any of the parties involved.*

It has been a complex and delicate situation for everyone. We acknowledge that it has had a significant emotional toll on all those involved.

The club is committed to continue to listen and learn to ensure we create an inclusive environment for our First Nations people.

Since the panel was set up, the club has cooperated fully with the process, and we have always wanted to see it resolved fairly and quickly.

Hawthorn thanks the AFL and the Independent Panel for their work during this process.

The club hopes this creates an opportunity for healing and to address the hurt felt by many."

191. It admits paragraph 191.

C UNLAWFUL DISCRIMINATION

C.1 Peterson

C.1.1. Personal control conduct – Hawthorn vicarious liability

192. As to paragraph 192, it:

(a) refers to and relies on the Peterson Matters and paragraphs 41, 44, 45, 46, 49-52, 55-57, 60, 63, and/or 67 above;

(b) says that if any **personal control conduct** as alleged was done (as that term is defined) (which is denied), such conduct was not done within the scope of employment or authority of Hawthorn;

(c) says further that if any personal control conduct occurred (which is denied), such conduct did not amount to the imposition of an unreasonable condition or requirement;

(d) says further that if any personal control conduct occurred (which is denied), such conduct did not involve a distinction, restriction or preference based on race;

(e) otherwise denies paragraph 192.

193. It denies paragraph 193 and otherwise refers to and relies on paragraph 192 above.

194. It denies paragraph 194 and otherwise refers to and relies on paragraph 192 above.

195. It denies paragraph 195 and otherwise refers to and relies on paragraph 192 above.

196. It denies paragraph 196 and otherwise refers to and relies on paragraph 192 above.

197. It denies paragraph 197 and otherwise refers to and relies on paragraph 192 above.

C.1.2 Personally harmful conduct – Hawthorn vicarious liability

198. As to paragraph 198, it:

(a) refers to and relies on the Peterson Matters and paragraphs 41, 44, 45, 46, 49-52, 55-57, 60, 63, 67 and/or 70 above;

(b) says that if any **personally harmful conduct** as alleged was done (as that term is defined) (which is denied), such conduct was not done within the scope of employment or authority of Hawthorn;

(c) says further that if any personally harmful conduct occurred (which is denied), such conduct did not involve a distinction, restriction or preference based on race;

(d) otherwise denies paragraph 198.

199. It denies paragraph 199 and otherwise refers to and relies on paragraph 198 above.

200. It denies paragraph 200 and otherwise refers to and relies on paragraph 198 above.

201. It denies paragraph 201 and otherwise refers to and relies on paragraph 198 above.

202. It denies paragraph 202 and otherwise refers to and relies on paragraph 198 above.

203. It denies paragraph 203 and otherwise refers to and relies on paragraph 198 above.

C.1.3 Family control and interference – Hawthorn vicarious liability

204. As to paragraph 204, it:

(a) refers to and relies on the Peterson Matters and paragraphs 44, 45, 46, 49-52, 55-57, 60, 63, and/or 67 above;

(b) says that if any **family control and interference conduct** as alleged was done (as that term is defined) (which is denied), such conduct was not done within the scope of employment or authority of Hawthorn;

(c) says further that if any family control and interference conduct occurred (which is denied), such conduct did not amount to the imposition of an unreasonable condition or requirement;

(d) says further that if any family control and interference conduct occurred (which is denied), such conduct did not involve a distinction, restriction or preference based on race;

(e) otherwise denies paragraph 204.

205. It denies paragraph 205 and otherwise refers to and relies on paragraph 204 above.

206. As to paragraph 206, it:

(a) refers to and relies on the Peterson Matters and paragraphs 44, 45, 46, 49-52, 55-57, 60, 63, and/or 67 above;

(b) says that if any **family control requirement** as alleged was imposed (as that term is defined) (which is denied), such conduct was not done within the scope of employment or authority of Hawthorn;

(c) says further that if any family control requirement was imposed (which is denied), such conduct did not amount to the imposition of an unreasonable condition or requirement;

(d) says further that if any family control requirement was imposed (which is denied), such conduct did not involve a distinction, restriction or preference based on race;

(e) otherwise denies paragraph 206.

207. It denies paragraph 207 and otherwise refers to and relies on paragraphs 204 and 206 above.

208. It denies paragraph 208 and otherwise refers to and relies on paragraphs 204 and 206 above.

209. It denies paragraph 209 and otherwise refers to and relies on paragraph 204 above.

210. It denies paragraph 210 and otherwise refers to and relies on paragraph 204 above.

C.1.3 Stereotyping or domineering conduct – Hawthorn vicarious liability

211. As to paragraph 211 it:

(a) refers to and relies on paragraph 67 above;

(b) says that if any **stereotyping conduct** as alleged was done (as that term is defined) (which is denied), such conduct was not done within the scope of employment or authority of Hawthorn;

(c) otherwise denies paragraph 211.

212. As to paragraph 212 it:

(a) refers to and relies on paragraph 70 above;

(b) says that if any **domineering conduct** as alleged was done (as that term is defined) (which is denied), such conduct was not done within the scope of employment or authority of Hawthorn;

(c) says further that if any domineering conduct occurred (which is denied), such conduct did not involve a distinction, restriction or preference based on race;

(d) otherwise denies paragraph 212.

C.2 Rioli

C.2.1. Personal control conduct – Hawthorn vicarious liability

213. As to paragraph 213 it:

(a) refers to and relies on the Rioli Matters and paragraphs 77, 81, 82, 83, 93, 99. 100, 101, 102, and/or 103 above;

(b) says that if any **personal control conduct** as alleged was done (as that term is defined) (which is denied), such conduct was not done within the scope of employment or authority of Hawthorn;

(c) says further that if any personal control conduct was done (which is denied), such conduct did not amount to the imposition of an unreasonable condition or requirement;

(d) says further that if any personal control conduct occurred (which is denied), such conduct did not involve a distinction, restriction or preference based on race;

(e) otherwise denies paragraph 213.

214. It denies paragraph 214 and otherwise refers to and relies on paragraph 213 above.

215. It denies paragraph 215 and otherwise refers to and relies on paragraph 213 above.

216. It denies paragraph 216 and otherwise refers to and relies on paragraph 213 above.

217. It denies paragraph 217 and otherwise refers to and relies on paragraph 213 above.

218. It denies paragraph 218 and otherwise refers to and relies on paragraph 213 above.

C.2.2 Personally harmful conduct – Hawthorn vicarious liability

219. As to paragraph 219 it:

(a) refers to and relies on the Rioli Matters and paragraphs 73, 74, 77, 81, 82, 83, 88, 89, 93, 94, 95, 96, 97, 99 100, 101, 102, 103 and/or 105 above;

(b) says that if any **personally harmful conduct** as alleged was done (as that term is defined) (which is denied), such conduct was not done within the scope of employment or authority of Hawthorn;

(c) says further that if any personally harmful conduct was done (which is denied), such conduct did not amount to the imposition of an unreasonable condition or requirement;

(d) says further that if any personally harmful conduct occurred (which is denied), such conduct did not involve a distinction, restriction or preference based on race;

(e) otherwise denies paragraph 219.

220. It denies paragraph 220 and otherwise refers to and relies on paragraph 219 above.

221. It denies paragraph 221 and otherwise refers to and relies on paragraph 219 above.

222. It denies paragraph 222 and otherwise refers to and relies on paragraph 219 above.

223. It denies paragraph 223 and otherwise refers to and relies on paragraph 219 above.

224. It denies paragraph 224 and otherwise refers to and relies on paragraph 219 above.

C.2.3 Family control and interference – Hawthorn vicarious liability

225. As to paragraph 225, it:

(a) refers to and relies on the Rioli Matters and paragraphs 77, 81, 82, 83, 89, 93, 99. 100, 101, 102, and/or 103 above;

(b) says that if any **family control and interference conduct** as alleged was done (as that term is defined) (which is denied), such conduct was not done within the scope of employment or authority of Hawthorn;

(c) says further that if any family control and interference conduct was done (which is denied), such conduct did not amount to the imposition of an unreasonable condition or requirement;

(d) says further that if any family control and interference conduct occurred (which is denied), such conduct did not involve a distinction, restriction or preference based on race;

(e) otherwise denies paragraph 225.

226. It denies paragraph 226 and otherwise refers to and relies on paragraph 225 above.

227. It denies paragraph 227 and otherwise refers to and relies on paragraph 225 above.

228. As to paragraph 228, it:

(a) refers to and relies on the Rioli Matters and paragraphs 77, 81, 82, 83, 89, 93, 99. 100, 101, 102, and/or 103 above;

(b) says that if any **family control requirement** as alleged was imposed (as that term is defined) (which is denied), such conduct was not done within the scope of employment or authority of Hawthorn;

(c) says further that if any family control requirement was imposed (which is denied), such conduct did not amount to the imposition of an unreasonable condition or requirement;

(d) says further that if any family requirement was imposed (which is denied), such conduct did not involve a distinction, restriction or preference based on race;

(e) otherwise denies paragraph 228.

229. It denies paragraph 229 and otherwise refers to and relies on paragraphs 225 and 228 above.

230. It denies paragraph 230 and otherwise refers to and relies on paragraphs 225 and 228 above.

231. It denies paragraph 231 and otherwise refers to and relies on paragraph 225 above.

232. It denies paragraph 232 and otherwise refers to and relies on paragraph 225 above.

C.2.4 Culturally harmful conduct – Hawthorn vicarious liability

233. As to paragraph 233, it:

(a) refers to and relies on the Rioli Matters and paragraphs 73, 74, 85, 86, 88, 89, 94, 100, 101, 102, and/or 103 above;

(b) says that if any **culturally harmful conduct** as alleged was done (as that term is defined) (which is denied), such conduct was not done within the scope of employment or authority of Hawthorn;

(c) says further that if any culturally harmful conduct was done (which is denied), such conduct did not amount to the imposition of an unreasonable condition or requirement;

(d) says further that if any culturally harmful conduct occurred (which is denied), such conduct did not involve a distinction, restriction or preference based on race;

(e) otherwise denies paragraph 233.

234. It denies paragraph 234 and otherwise refers to and relies on paragraph 233 above.

235. It denies paragraph 235 and otherwise refers to and relies on paragraph 233 above.

236. It denies paragraph 236 and otherwise refers to and relies on paragraph 233 above.

237. It denies paragraph 237 and otherwise refers to and relies on paragraph 233 above.

238. It denies paragraph 238 and otherwise refers to and relies on paragraph 233 above.

C.2.5 Stereotyping conduct – Hawthorn vicarious liability

239. As to paragraph 239, it:

(a) refers to and relies on paragraphs 90, 94, 96, and/or 100 above;

(b) says that if any **stereotyping conduct** as alleged was done (as that term is defined) (which is denied), such conduct was not done within the scope of employment or authority of Hawthorn;

(c) otherwise denies paragraph 239.

240. Paragraph 240 is vague and embarrassing and liable to be struck out. Under cover of that objection, it denies paragraph 240 and otherwise refers to and relies on Part C.2 above.

C.3 Ah Sam-Rioli

C.3.1. Personally harmful conduct – Hawthorn vicarious liability

241. As to paragraph 241, it:

(a) refers to and relies on the Rioli Matters and paragraphs 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 93, 94, 99, 100, 101, 102, and/or 103 above;

(b) says that if any **personally harmful conduct** as alleged was done (as that term is defined) (which is denied), such conduct was not done within the scope of employment or authority of Hawthorn;

(c) says further that if any personally harmful conduct was done (which is denied), such conduct did not amount to the imposition of an unreasonable condition or requirement;

(d) says further that if any personally harmful conduct occurred (which is denied), such conduct did not involve a distinction, restriction or preference based on race;

(e) otherwise denies paragraph 241.

242. It denies paragraph 242 and otherwise refers to and relies on paragraph 241 above.

243. It denies paragraph 243 and otherwise refers to and relies on paragraph 241 above.

244. It denies paragraph 244 and otherwise refers to and relies on paragraph 241 above.

C.3.2 Family control and interference conduct – Hawthorn vicarious liability

245. As to paragraph 245, it:

(a) refers to and relies on the Rioli Matters and paragraphs 77, 81, 82, 83, 89, 93, 99, 100, 101, 102, and/or 103 above;

(b) says that if any **family control and interference conduct** as alleged was done (as that term is defined) (which is denied), such conduct was not done within the scope of employment or authority of Hawthorn;

(c) says further that if any family control and interference conduct was done (which is denied), such conduct did not amount to the imposition of an unreasonable condition or requirement;

(d) says further that if any family control and interference conduct occurred (which is denied), such conduct did not involve a distinction, restriction or preference based on race;

(e) otherwise denies paragraph 245.

246. It denies paragraph 246 and otherwise refers to and relies on paragraph 245 above.

247. It denies paragraph 247 and otherwise refers to and relies on paragraph 245 above.

248. As to paragraph 248, it:

(a) refers to and relies on the Rioli Matters and paragraphs 77, 81, 82, 83, 89, 93, 99. 100, 101, 102, and/or 103 above;

(b) says that if any **family control requirement** as alleged was imposed (as that term is defined) (which is denied), such conduct was not done within the scope of employment or authority of Hawthorn;

(c) says further that if any family control requirement was imposed (which is denied), such conduct did not amount to the imposition of an unreasonable condition or requirement;

(d) says further that if any family requirement was imposed (which is denied), such conduct did not involve a distinction, restriction or preference based on race;

(e) otherwise denies paragraph 248.

249. It denies paragraph 249 and otherwise refers to and relies on paragraphs 245 and 248 above.

250. It denies paragraph 250 and otherwise refers to and relies on paragraphs 245 and 248 above.

C.3.3 Culturally harmful conduct – Hawthorn vicarious liability

251. As to paragraph 251, it:

(a) refers to and relies on the Rioli Matters and paragraphs 81, 82, 83, 84, 85, 86, 87, 89, 90, 91, 96, 99, 100, 101, 102, and/or 103 above;

(b) says that if any **culturally harmful conduct** as alleged was done (as that term is defined) (which is denied), such conduct was not done within the scope of employment or authority of Hawthorn;

(c) says further that if any culturally harmful conduct was imposed (which is denied), such conduct did not amount to the imposition of an unreasonable condition or requirement;

(d) says further that if any culturally harmful conduct occurred (which is denied), such conduct did not involve a distinction, restriction or preference based on race;

(e) otherwise denies paragraph 251.

252. It denies paragraph 252 and otherwise refers to and relies on paragraph 251 above.

253. It denies paragraph 253 and otherwise refers to and relies on paragraph 251 above.

254. It denies paragraph 254 and otherwise refers to and relies on paragraph 251 above.

C.3.4 Stereotyping conduct – Hawthorn vicarious liability

255. As to paragraph 255, it:

(a) refers to and relies on paragraphs 90, 96, and/or 100 above;

(b) says that if any **stereotyping conduct** as alleged was done (as that term is defined) (which is denied), such conduct was not done within the scope of employment or authority of Hawthorn;

(c) otherwise denies paragraph 255.

256. Paragraph 256 is vague and embarrassing and liable to be struck out. Under cover of that objection, it denies paragraph 256 and otherwise refers to and relies on Part C.3 above.

C.4 Miller-Lewis

C.4.1. Personal control conduct – Hawthorn vicarious liability

257. As to paragraph 257, it:

(a) refers to and relies on the Miller-Lewis Matters and paragraphs 110, 11, 117, 123, 126, 128, 129, 130, 131, 132, 133, 134, 142, 146, 148, 153, and/or 155 above;

(b) says that if any **personal control conduct** as alleged was done (as that term is defined) (which is denied), such conduct was not done within the scope of employment or authority of Hawthorn;

(c) says further that if any personal control conduct was done (which is denied), such conduct did not amount to the imposition of an unreasonable condition or requirement;

(d) says further that if any personal control conduct occurred (which is denied), such conduct did not involve a distinction, restriction or preference based on race;

(e) otherwise denies paragraph 257.

258. It denies paragraph 258 and otherwise refers to and relies on paragraph 257 above.

259. It denies paragraph 259 and otherwise refers to and relies on paragraph 257 above.

260. It denies paragraph 260 and otherwise refers to and relies on paragraph 257 above.

261. It denies paragraph 261 and otherwise refers to and relies on paragraph 257 above.

262. It denies paragraph 262 and otherwise refers to and relies on paragraph 257 above.

C.4.2 Personally harmful conduct – Hawthorn vicarious liability

263. As to paragraph 263, it:

(a) refers to and relies on the Miller-Lewis Matters and paragraphs 110, 111, 117, 123, 126, 128, 129, 130, 131, 132, 133, 134, 138, 142, 146, 148, 153, 155, 157, 159 and/or 161 above;

(b) says that if any **personally harmful conduct** as alleged was done (as that term is defined) (which is denied), such conduct was not done within the scope of employment or authority of Hawthorn;

(c) says further that if any personally harmful conduct was done (which is denied), such conduct did not amount to the imposition of an unreasonable condition or requirement;

(d) says further that if any personally harmful conduct occurred (which is denied), such conduct did not involve a distinction, restriction or preference based on race;

(e) otherwise denies paragraph 263.

264. It denies paragraph 264 and otherwise refers to and relies on paragraph 263 above.

265. It denies paragraph 265 and otherwise refers to and relies on paragraph 263 above.

266. It denies paragraph 266 and otherwise refers to and relies on paragraph 263 above.

267. It denies paragraph 267 and otherwise refers to and relies on paragraph 263 above.

268. It denies paragraph 268 and otherwise refers to and relies on paragraph 263 above.

C.4.3 Family control and interference – Hawthorn vicarious liability

269. As to paragraph 269, it:

(a) refers to and relies on the Miller-Lewis Matters and paragraphs 110, 111, 117, 123, 126, 128, 129, 130, 131, 132, 133, 134, 142, 143,146, 148 and/or 155 above;

(b) says that if any **family control and interference conduct** as alleged was done (as that term is defined) (which is denied), such conduct was not done within the scope of employment or authority of Hawthorn;

(c) says further that if any family control and interference conduct was done (which is denied), such conduct did not amount to the imposition of an unreasonable condition or requirement;

(d) says further that if any family control and interference conduct occurred (which is denied), such conduct did not involve a distinction, restriction or preference based on race;

(e) otherwise denies paragraph 269.

270. It denies paragraph 270 and otherwise refers to and relies on paragraph 269 above.

271. As to paragraph 271, it:

(a) refers to and relies on the Miller-Lewis Matters and paragraphs 110, 111, 117, 123, 126, 128, 129, 130, 131, 132, 133, 134, 142, 143,146, 148 and/or 155 above;

(b) says that if any **family control requirement** as alleged was imposed (as that term is defined) (which is denied), such conduct was not done within the scope of employment or authority of Hawthorn;

(c) says further that if any family control requirement was imposed (which is denied), such conduct did not amount to the imposition of an unreasonable condition or requirement;

(d) says further that if any family control requirement was imposed (which is denied), such conduct did not involve a distinction, restriction or preference based on race;

(e) otherwise denies paragraph 271.

272. It denies paragraph 272 and otherwise refers to and relies on paragraph 271 above.

273. It denies paragraph 273 and otherwise refers to and relies on paragraphs 269 and 271 above.

274. It denies paragraph 274 and otherwise refers to and relies on paragraph 269 above.

275. It denies paragraph 275 and otherwise refers to and relies on paragraph 269 above.

C.5 Lewis

276. Paragraph 276 is vague and embarrassing and liable to be struck out. Under cover of that objection, it denies paragraph 276 and otherwise refers to and relies on Part C.4 above.

C.6 Egan

C.6.1 Marginalising conduct – Hawthorn vicarious liability

277. Paragraph 277 is vague and embarrassing, lacks the necessary particulars and is liable to be struck out. Under cover of objection, it:

(a) refers to and relies on the Egan Matters and paragraphs 170, 173, 177, 178 and/or 179 above;

(b) says that if any **marginalising conduct** as alleged was done (as that term is defined) (which is denied), such conduct was not done within the scope of employment or authority of Hawthorn;

(c) says further that if any marginalising conduct was imposed (which is denied), such conduct did not amount to the imposition of an unreasonable condition or requirement;

(d) says further that if any marginalising conduct occurred (which is denied), such conduct did not involve a distinction, restriction or preference based on race;

(e) otherwise denies paragraph 277.

278. It denies paragraph 278 and otherwise refers to and relies on paragraph 277 above.

279. It denies paragraph 279 and otherwise refers to and relies on paragraph 277 above.

280. It denies paragraph 280 and otherwise refers to and relies on paragraph 277 above.

281. It denies paragraph 281 and otherwise refers to and relies on paragraph 277 above.

282. It denies paragraph 282 and otherwise refers to and relies on paragraph 277 above.

C.6.2 Culturally harmful conduct – Hawthorn vicarious liability

283. As to paragraph 283, it:

(a) refers to and relies on the Egan Matters and paragraphs 170, 173, 177, 178 and/or 179 above;

(b) says that if any **culturally harmful conduct** as alleged was done (as that term is defined) (which is denied), such conduct was not done within the scope of employment or authority of Hawthorn;

(c) says further that if any culturally harmful conduct was imposed (which is denied), such conduct did not amount to the imposition of an unreasonable condition or requirement;

(d) says further that if any culturally harmful conduct occurred (which is denied), such conduct did not involve a distinction, restriction or preference based on race;

(e) otherwise denies paragraph 283.

284. It denies paragraph 284 and otherwise refers to and relies on paragraph 283 above.

285. It denies paragraph 285 and otherwise refers to and relies on paragraph 283 above.

286. It denies paragraph 286 and otherwise refers to and relies on paragraph 283 above.

287. It denies paragraph 287 and otherwise refers to and relies on paragraph 283 above.

288. It denies paragraph 288 and otherwise refers to and relies on paragraph 283 above.

C.7 Hawthorn direct liability

289. Paragraph 289 is vague and embarrassing, lacking in the proper particulars and is liable to being struck out. Under cover of that objection, it denies paragraph 289 and otherwise refers to and relies on the Reasonable Steps to Prevent Discriminatory Conduct.

290. Paragraph 290 is vague and embarrassing, lacking in the proper particulars and is liable to being struck out. Under cover of that objection:

(a) denies paragraph 290;

(b) says that if any **inadequate systems conduct** as alleged was done (as that term is defined) (which is denied), such conduct was not done within the scope of employment or authority of Hawthorn;

(c) says further that if any inadequate systems conduct was imposed (which is denied), such conduct did not amount to the imposition of an unreasonable condition or requirement;

(d) says further that if any inadequate systems conduct occurred (which is denied), such conduct did not involve a distinction, restriction or preference based on race;

(e) otherwise refers to and relies on the Reasonable Steps to Prevent Discriminatory Conduct.

291. Paragraph 291 is vague and embarrassing, lacking in the proper particulars and is liable to being struck out. Under cover of that objection it denies paragraph 291 and otherwise refers to and relies on paragraph 290 above and the Reasonable Steps to Prevent Discriminatory Conduct.

292. Paragraph 292 is vague and embarrassing, lacking in the proper particulars and is liable to being struck out. Under cover of that objection:

(a) denies paragraph 292;

(b) says that if any **race culture condition** as alleged was imposed (as that term is defined) (which is denied), such conduct was not done within the scope of employment or authority of Hawthorn;

(c) says further that if any race culture condition was imposed (which is denied), such conduct did not amount to the imposition of an unreasonable condition or requirement;

(d) says further that if any race culture condition occurred (which is denied), such conduct did not involve a distinction, restriction or preference based on race;

(e) otherwise refers to and relies on the Reasonable Steps to Prevent Discriminatory Conduct.

293. Paragraph 293 is vague and embarrassing, lacking in the proper particulars and is liable to being struck out. Under cover of that objection, it denies paragraph 293 and otherwise refers to and relies on paragraphs 290 and 292 above and the Reasonable Steps to Prevent Discriminatory Conduct.

294. Paragraph 294 is vague and embarrassing, lacking in the proper particulars and is liable to being struck out. Under cover of that objection, it denies paragraph 294 and otherwise refers to and relies on paragraphs 290 above and the Reasonable Steps to Prevent Discriminatory Conduct.

295. Paragraph 295 is vague and embarrassing, lacking in the proper particulars and is liable to being struck out. Under cover of objection:

(a) it denies paragraph 295;

(b) says that the applicants were treated the same as, or similar to, all other AFL players or their partners by Hawthorn regardless of race, so as to enable such players to achieve success in an elite sporting environment;

(c) it otherwise refers to and relies on Parts C.1, C.2 and C.4 above and the Reasonable Steps to Prevent Discriminatory Conduct.

296. Paragraph 296 is vague and embarrassing, lacking in the proper particulars and is liable to being struck out. Under cover of that objection, it denies paragraph 296 and otherwise refers to and relies on paragraph 295 above and the Reasonable Steps to Prevent Discriminatory Conduct.

297. Paragraph 297 is vague and embarrassing, lacking in the proper particulars and is liable to being struck out. Under cover of that objection, it denies paragraph 297 and otherwise refers to and relies on paragraph 295 above and the Reasonable Steps to Prevent Discriminatory Conduct.

D NEGLIGENCE

298. As to paragraph 298:

(a) save that it admits that it is vicariously liable for actions of its employees and agents, including those named in paragraph 298(a) to (g) inclusive of the SOC, where those actions were performed in the course of and within the scope of, their employment with Hawthorn, it denies paragraph 298;

(b) further and for the avoidance of doubt, it says that Hawthorn is not directly or vicariously liable for conduct that involves Impermissible Conduct;

(c) it otherwise denies paragraph 298.

299. As to paragraph 299:

(a) save that it says Hawthorn owed Peterson, Rioli and Miller-Lewis a non-delegable duty to prevent reasonably foreseeable psychiatric injury during the course of their employment with it, it denies paragraph 299;

(b) it says further that any relevant duty of care owed by it to Peterson, Rioli and Miller-Lewis was not engaged, as Hawthorn was not on notice that Peterson, Rioli and Miller-Lewis were at risk of suffering psychiatric injury;

(c) it otherwise denies paragraph 299.

300. It denies paragraph 300.

301. It denies paragraph 301.

302. As to paragraph 302, it:

(a) says "*culturally harmful conduct*" is vague and embarrassing, undefined and unclear (paragraph 302(b) and (c));

(b) says "*the fact of historical racism*" is vague and embarrassing, undefined and unclear (paragraph 302(k));

(c) says "*the ongoing impacts of that historical racism*" is vague and embarrassing, undefined and unclear (paragraph 302(l));

(d) under cover of the above objections, denies paragraph 302.

303. As to paragraph 303, it:

(a) says "*culturally safe*" is vague and embarrassing, undefined and unclear (paragraph 303(a));

(b) under cover of the above objection, denies paragraph 303.

304. As to paragraph 304, it:

(a) says "*culturally safe*" is vague and embarrassing, undefined and unclear (paragraph 304(e));

(b) under cover of the above objection, denies paragraph 304.

305. As to paragraph 305, it:

(a) says "*culturally safe*" is vague and embarrassing, undefined and unclear (paragraph 305(e));

(b) under cover of the above objection, denies paragraph 305.

E DAMAGES

E.1 General damages

306. It denies paragraph 306.

307. It denies paragraph 307.

308. It denies paragraph 308.

309. It denies paragraph 309.

310. It denies paragraph 310.

311. It denies paragraph 311.

E.2 Aggravated and exemplary damages

312. It denies paragraph 312 and says further in respect of paragraph 312(b) that Ah Sam-Rioli and Lewis have not alleged negligence against Hawthorn and that accordingly the allegations in respect of Ah Sam-Rioli and Lewis contained in paragraph 312(b) are liable to be struck out.

JUSTIN L BOURKE KC

REBECCA DAVERN

YUSUR AL-AZZAWI

DATED: 3 October 2024

……..

Signed by Chris Hartigan

PIPER ALDERMAN

Lawyers for the Respondent

Certificate of lawyer

I Chris Hartigan certify to the Court that, in relation to the defence filed on behalf of the Respondent, the factual and legal material available to me at present provides a proper basis for:

(a) each allegation in the pleading; and

(b) each denial in the pleading; and

(c) each non admission in the pleading.

Date: 3 October 2024

Signed by Chris Hartigan
Piper Alderman
Lawyer for the Respondent