Form 17
Rule 8.05(1)(a)

Statement of claim

No. VID of 2024

Federal Court of Australia

District Registry: Victoria

Division: General

Cyril Rioli and others

Applicants

Hawthorn Football Club Ltd

Respondent

CONTENTS

A. Preliminary 3
A.1 The Applicants 3
A.2 The Respondent and its employees or agents 5
A.3 Proceedings terminated in Australian Human Rights Commission 7
B. Hawthorn's conduct 8
B.1 Policy framework 8
B.2 Employment relationship 14
B.3 Hawthorn's conduct in respect of Mr Carl Peterson 16
B.4 Hawthorn's conduct in respect of Mr Cyril Rioli and Ms Shannyn Ah Sam-Rioli 21
B.5 Hawthorn's conduct in respect of Mr Jermaine Miller-Lewis and Ms Montanah-Rae Lewis 28
B.6 Hawthorn's conduct in respect of Mr Leon Egan 38
B.7 Hawthorn's subsequent conduct 43
C. Unlawful discrimination 46
C.1 Carl Peterson 46
C.1.1 Personal control conduct—Hawthorn vicarious liability 46
C.1.2 Personally harmful conduct—Hawthorn vicarious liability 48
C.1.3 Family control and interference—Hawthorn vicarious liability 49
C.1.4 Stereotyping or domineering conduct—Hawthorn vicarious liability 52

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C.2 Mr Cyril Rioli 53
C.2.1 Personal control conduct—Hawthorn vicarious liability 53
C.2.2 Personally harmful conduct—Hawthorn vicarious liability 55
C.2.3 Family control and interference conduct—Hawthorn vicarious liability .. 57
C.2.4 Culturally harmful conduct—Hawthorn vicarious liability 59
C.2.5 Stereotyping conduct—Hawthorn vicarious liability 61
C.3 Shannon Ah Sam-Rioli 62
C.3.1 Personally harmful conduct—Hawthorn vicarious liability 62
C.3.2 Family control and interference conduct—Hawthorn vicarious liability .. 63
C.3.3 Culturally harmful conduct—Hawthorn vicarious liability 64
C.3.4 Stereotyping conduct—Hawthorn vicarious liability 65
C.4 Jermaine Miller-Lewis 66
C.4.1 Personal control conduct—Hawthorn vicarious liability 66
C.4.2 Personally harmful conduct—Hawthorn vicarious liability 67
C.4.3 Family control and interference conduct—Hawthorn vicarious liability .. 69
C.5 Ms Montanah-Rae Lewis 71
C.6 Leon Egan 71
C.6.1 Marginalising conduct—Hawthorn vicarious liability 71
C.6.2 Culturally harmful conduct—Hawthorn vicarious liability 73
C.7 Hawthorn direct liability 74
D. Negligence 79
E. Damages 84
E.1 General damages 84
E.2 Aggravated and exemplary damages 86

A. PRELIMINARY

A.1 The Applicants

1. Mr Carl Peterson:

   (a) is a Yugunga-Nya and Martu Aboriginal man (Yugunga-Nya and Martu country is part of the Murchison and the Western Desert);

   (b) was born on 3 July 1987;

   (c) grew up in Perth and Kununurra, Western Australia;

   (d) was employed by the Respondent (**Hawthorn**) as a professional football player from 2008 to 2010;

   (e) from March 2007, for 10 years, was in a de-facto relationship with Ms Nikita Rotumah, an Indigenous person.

2. Mr Cyril Rioli:

   (a) is an Aboriginal man of:

      (i) the Munupi and Malawu clan (whose country is on the Tiwi Islands: Pirlangimpi on Melville Island and Pajuwapura on Bathurst Island) on his father's side;

      (ii) the Anmatjere clan (whose country is Ti Tree and Daly River) on his mother's side.

   (b) was born on 14 July 1989;

   (c) grew up in Pirlangimpi and Darwin, Northern Territory, until he moved to boarding school in Melbourne at 14 years old;

   (d) was employed by the Hawthorn as a professional football player from 2007 to 2018;

   (e) is, and was at all relevant times, in a relationship with or married to Ms Shannyn Ah Sam-Rioli.

3. Ms Shannyn Ah Sam-Rioli:

   (a) is an Aboriginal woman of:

      (i) on her father's side, the Garrawa and Yanyuwa people (whose country is Manangoora and Boorroloola) and the Wakka Wakke people (whose country is Cherbourg);

      (ii) on her mother's side, the Maithakari people (whose country is Clonclurry) and the Waanyi people (whose country is Lorne Hill);

   (b) was born on 2 January 1991;

   (c) grew up in Darwin, Northern Territory;

   (d) is, and was at all relevant times, married to Mr Rioli.

4. Mr Rioli and Ms Ah Sam-Rioli:

   (a) met in around 2003 when she was 13 and he was 14;

   (b) were in a relationship by around 2007;

   (c) married on 18 October 2014.

5. Mr Jermaine Miller-Lewis:

   (a) is a Noongar and Yamatji Aboriginal man, whose country is Noongar on his mother's side and Yamatji on his father's side;

   (b) was born on 23 February 1996;

   (c) grew up in Stirling and Perth, Western Australia;

   (d) was employed by Hawthorn as a professional football player from 2014 to 2016;

   (e) is, and was at all relevant times, married to Ms Montanah-Rae Lewis.

6. Ms Montanah-Rae Lewis:

   (a) is a non-Indigenous person;

   (b) was born on 23 February 1996;

(c) grew up in Moora, Western Australia;

(d) is, and was at all relevant times, married to Mr Miller-Lewis.

7. Mr Miller-Lewis and Ms Lewis:

(a) commenced a relationship in early 2011;

(b) commenced living together in 2012.

8. Mr Leon Egan:

(a) is a Yorta Yorta/Bangerang, Wiradjuri and Gunditjmara man;

(b) was born in Wagga Wagga in Wiradjuri country on 29 March 1969;

(c) grew up in Wagga Wagga and moved to Melbourne when he was 13 years of age;

(d) was engaged and employed by Hawthorn as an Indigenous mentor/adviser from 2012 to 2015.

A.2 The Respondent and its employees or agents

9. Hawthorn is, and was at all relevant times, a not-for-profit Australian public company, limited by guarantee, and capable of being sued in its own name.

Particulars

From 16 December 2013, Hawthorn operated pursuant to the "Constitution of the Hawthorn Football Club Limited".

The Constitution was amended on 11 December 2018.

10. At all relevant times, Hawthorn relevantly fielded a team in the men's national competition conducted by the Australian Football League (**AFL**) pursuant to a licence granted by the AFL Commission.

11. At all relevant times, Hawthorn was required to comply with the rules, regulations, by-laws, policies and procedures (howsoever else described) made by the AFL and/or the AFL Commission.

12. Mr Alastair Clarkson was:

    (a) employed by Hawthorn as Head Coach between 2005 and 2021;

    (b) acting within the scope of his employment in doing, or failing to do, the things pleaded in this statement of claim.

13. Mr Chris Fagan was:

    (a) employed by Hawthorn as:

        (i) Head of Coaching and Development between 2008 and 2013;

        (ii) General Manager of Football between 2013 and 2016;

    (b) acting within the scope of his employment in doing, or failing to do, the things pleaded in this statement of claim.

14. Mr Jason Burt was:

    (a) employed by Hawthorn as:

        (i) Head of Player Services and Football Administration Manager between 2006 and 2016;

        (ii) General Manager Football Operations in 2016 and 2018;

        (iii) General Manager – People, Culture and Integrity between 2017 and 2019;

    (b) acting within the scope of his employment in doing, or failing to do, the things pleaded in this statement of claim.

15. Mr Cameron Matthews was:

    (a) employed by Hawthorn as:

        (i) Player Development Manager between 2014 and 2021;

        (ii) Football Operations Manager between 2021 and 2022;

    (b) acting within the scope of his employment in doing, or failing to do, the things pleaded in this statement of claim.

16. Mr Mark Evans was:

    (a) employed by Hawthorn as General Manager Football Operations between 2005 and 2013;

    (b) acting within the scope of his employment in doing, or failing to do, the things pleaded in this statement of claim.

17. Mr Jeffrey Kennett was:

    (a) President of Hawthorn between 2005 and 2011, and between 2017 and 2022;

    (b) acting within the scope of his responsibilities, and / or was acting as an agent of Hawthorn, in doing, or failing to do, the things pleaded in this statement of claim.

18. Mr Graham Wright was:

    (a) employed by Hawthorn in the Football Department between 2007 and 2018 in recruiting and list management and between 2018 and 2021 as Head of Football;

    (b) acting within the scope of his employment in doing, or failing to do, the things pleaded in this statement of claim.

A.3 Proceedings terminated in Australian Human Rights Commission

19. On 2 June 2023, the Applicants lodged a complaint in the Australian Human Rights Commission (**Commission**).

20. On 27 May 2024, the Commission terminated the complaint pursuant to the power in s 46PH(1B)(b) of the *Australian Human Rights Commission Act 1986* (Cth).

B. HAWTHORN'S CONDUCT

B.1 Policy framework

21. Further to [11], at all relevant times Hawthorn was required to comply with the AFL Rules (**Rules**).

Particulars

The Rules are in writing and are publicly available.

22. At all relevant times, the Rules:

(a) required that no person subject to the Rules and Regulations shall act towards or speak to any other person in a manner, or engage in any other conduct which threatens, disparages, vilifies or insults another person on any basis, including but not limited to, a person's race, religion, colour, descent or national or ethnic origin, disability, sexual orientation or gender identity (**Peek Rule**).

Particulars

The rule was first introduced (as Rule 30) in 1995 in the aftermath of Indigenous Essendon player Michael Long experiencing racial abuse during the drawn Anzac Day game.

The rule was amended in 1997 to provide for conciliation, education and confidentiality, to introduce new penalties and to extend beyond players to employees of AFL clubs with "on-field" access.

The rule was amended in 2009 to broaden the grounds on which a complaint could be made to include vilification on the basis of ability/special ability and sexual orientation, preference or identity, however at the time the rule only applied to 'on-field' incidents.

In 2013, the rule was renumbered as rule 35 and extended to apply to "off-field" incidents.

The rule was amended in 2021. From on or about March 2021, on the recommendation of Mr Long, the rule became known as the Peek Rule.

The rule is now Rule 35, in particular Rule 35.1.

(b) had the effect that unless Hawthorn took all reasonable steps to prevent persons employed, engaged or otherwise associated with it from engaging in conduct which contravened the Peek Rule, Hawthorn would be deemed to be vicariously liable for the conduct of such a person contravening the Peek Rule.

Particulars

AFL Rules, rule 35.15.

(c) enabled Hawthorn to lodge, by a Club Official, a complaint in writing with the Complaints Officer of the AFL alleging a contravention of the Peek Rule.

Particulars

AFL Rules, rule 35.2.

(d) provided a framework for dealing with complaints mentioned in the last sub-paragraph such that, had Hawthorn lodged such a complaint, the process by which it would have been dealt with was:

(i) in the first instance, by conciliation following which, if the complaint was resolved, the subject of the complaint would attend an education program approved by the AFL unless the conciliator reasonably considered that the subject of the complaint had not contravened the Peek Rule;

(ii) if the complaint was not resolved at conciliation, referral to the Disciplinary Tribunal.

Particulars

AFL Rules, rule 35.3 – 35.12.

23. Further to [11]:

(a) from 2006 until January 2009, Hawthorn was required to comply with the "Anti-Discrimination & Harassment Policy" (together with the policy described in the below sub-paragraph, **ADH Policy**) contained at [7.2] of the Australian Football League Member Protection Policy.

Particulars

The ADH Policy applicable from 2006 until January 2009 was in writing, publicly available and undated.

(b) from January 2009 until February 2013, Hawthorn was required to comply with the "Anti-Discrimination & Harassment Policy" (together with the policy described in the above sub-paragraph, **ADH Policy**) contained at [5.2] of the Australian Football League and Affiliated State Body Member Protection Policy.

Particulars

The ADH Policy applicable from January 2009 until February 2013 was in writing, publicly available, dated January 2009 and described as 'VERSION 2'.

(c) from February 2013, Hawthorn was required to comply with the National Vilification and Discrimination Policy (**Discrimination Policy**) of the AFL and affiliated leagues and bodies.

Particulars

The Discrimination Policy is in writing, publicly available and dated February 2013. Affiliated leagues and bodies are defined in section 3 of the Discrimination Policy.

24. From 2006 until January 2009, the ADH Policy:

(a) prohibited discrimination (and requesting, assisting, instructing, inducing or encouraging discrimination) on the basis of, relevantly, marital status, pregnancy, race and sex or gender (together with the prohibition pleaded below at [25(a)] and [26(a)], **discrimination prohibition**) (section 7.2, read with the Dictionary definition of "discrimination");

(b) prohibited harassment, which was defined as any type of behaviour that the other person does not want and does not return and that is offensive, abusive, belittling or threatening and included abuse such as bullying, humiliation, verbal abuse and insults (together with the prohibition pleaded below at [25(b)] and [26(b)], **harassment prohibition**) (section 7.2, read with the Dictionary definition of "abuse" and "harassment").

25. From January 2009 until February 2013, the ADH Policy:

(a) prohibited discrimination (and requesting, assisting, instructing, inducing or encouraging discrimination) on the basis of, relevantly, marital status, pregnancy, race, sex/gender, social origin, and association with a person having one of these characteristics (together with the prohibition pleaded above

at [24(a)] and below at [26(a)], **discrimination prohibition**) (section 5.2(a) and (b));

(b) prohibited harassment (and requesting, assisting, instructing, inducing or encouraging harassment), which was defined as behaviour that is unwanted, unwelcome or uninvited and is offensive, intimidating and/or humiliating (together with the prohibition pleaded above at [24(b)] and below at [26(b)], **harassment prohibition**) (section 5.2(a) and (c)).

26. At all relevant times from February 2013, the Discrimination Policy:

(a) prohibited conduct by league participants and club officials that may reasonably be considered to incite hatred towards, contempt for, ridicule of or discrimination against a person or group of persons on the ground of their race, religion, gender, colour, sexual preference, orientation or identity, or special ability or disability (together with the prohibition pleaded above at [24(a)] and [25(a)], **discrimination prohibition**) (section 4.1);

(b) prohibited conduct by league participants and club officials that may reasonably be considered to be offensive, abusive, belittling or threatening, or which was otherwise unwelcome and a reasonable person would recognise it as being unwelcome and likely to cause the recipient to feel offended, humiliated or intimidated (together with the prohibition pleaded above at [24(b)] and [25(b)], **harassment prohibition**) (section 4.2);

(c) required the AFL to ensure that Hawthorn had a Club Complaints Officer (section 5);

(d) enabled employees and agents of Hawthorn to lodge a complaint with the Club Complaints Officer in the event of an alleged breach of the discrimination prohibition or the harassment prohibition by, relevantly, another member of the Club (section 6.1);

(e) provided a framework (see sections 6-10) for dealing with complaints mentioned in the last sub-paragraph such that, had an employee or agent of Hawthorn lodged such a complaint, the process by which such an intra-club complaint would have been dealt with was:

(i) in the first instance, by informal resolution, following which, if the complaint was not resolved or was considered to be incapable of informal resolution, by the lodging of the complaint with the AFL's Complaints Officer;

(ii) for complaints lodged with the AFL's Complaints Officer, by a process of conciliation and, potentially, investigation;

(iii) for complaints not resolved by conciliation, by disciplinary tribunal hearing.

27. Further to [11], from August 2017, Hawthorn was required to comply with the Australian Football League Respect & Responsibility Policy (**R and R policy**).

Particulars

The R and R policy is in writing, publicly available and dated August 2017.

28. At all relevant times from August 2017, the R and R policy:

(a) (on page 10) recognised that AFL Clubs (including Hawthorn) may be perceived to have, or actually be found to have, a conflict of interest in dealing with accusations against one of their club members or officials;

(b) provided a mechanism for, relevantly, clubs (including Hawthorn) to consider how issues of alleged or proven unacceptable conduct in personal life of AFL personnel would impact their recognition as a leader of the game and in the community (see page 12);

(c) enabled Hawthorn to make or disclose a complaint about a breach of the R and R policy to the AFL (see process on page 14).

29. Further to [11], Hawthorn was required to comply with the AFL Vilification Framework (**Vilification Framework**).

Particulars

The Vilification Framework is in writing and publicly available. Particulars of the commencement date of the Vilification Framework will be provided after discovery.

30. The Vilification Framework:

(a) recognised:

(i) (on page 3) clear links between ethnic and race-based discrimination, and issues such as depression, psychological distress, stress and anxiety;

(ii) (on page 3) probable links between ethnic and race-based discrimination, and poor general health, quality of life, alcohol and substance misuse, smoking and peer violence;

(b) (on page 8) required Hawthorn to observe all facets of the Vilification Framework and endorse future activities including establishing and promoting connections with support services and developing social responsibility components of the framework;

(c) (on page 10) provided that Hawthorn, as a "key stakeholder" within the AFL industry, aimed to:

(i) raise awareness of the importance of the AFL industry being an inclusive environment for all people irrespective of their particular characteristics or background;

(ii) raise the awareness across the AFL industry of the impact that vilification can and does have on individuals, clubs, the industry and the wider community;

(d) (on page 11) recorded that Hawthorn, as a "key stakeholder" within the AFL industry, undertook to:

(i) educate the AFL industry on the impact that vilification can have on individuals, clubs, the industry and the wider community;

(ii) build the capacity of the AFL industry to recognise, address, and provide support to persons who are affected by, vilification of any form;

(e) (on page 11) required that Hawthorn work collaboratively on the development and delivery of education programs to ensure consistency of messaging relating to vilification.

B.2 Employment relationship

31. At all relevant times, Hawthorn employed its players and any Indigenous mentors/advisers (including persons in equivalent roles) by contracts.

32. At all relevant times there existed an AFL Players' Code of Conduct (**Code**), the purposes of which included to establish standards of performance and behaviour for AFL footballers (clause 1.2) and to clarify the duties and obligations set out in each Club's contracts with its players (clause 1.3, previously clause 7.2).

Particulars

The Code is in writing, publicly available and amended from time to time.

33. Hawthorn was consulted on the Code and at all relevant times knew of its content.

Particulars

Clause 1.1 of the Code states that each AFL Club was consulted in relation to the formulation of the Code.

34. At all relevant times, a direction by Hawthorn to players it employed that they were to comply with the Code would have been (or was) a lawful and reasonable direction.

35. At all relevant times, the Code:

(a) recognised that a player was entitled to have his privacy, including that of his family and friends, respected and that the Code was not intended to apply to activities engaged in by a player of a private nature, which may include activities with family, friends and/or other players (clause 1.2);

(b) provided that players must not wilfully engage or participate in any activity which prevented players from playing AFL football to the best of their ability (clause 3.1, previously clause 2.2);

(c) provided that players must not vilify other players on the basis of their race, religion, colour, sex, sexual orientation or other related characteristics (**non-vilification provision**) (clause 3.4, previously in the schedule);

(d) provided that breaches of the non-vilification provision were to be dealt with in accordance with the Rules (clause 3.4, previously in the schedule);

(e) included provisions dealing with the imposition of disciplinary measures by AFL Clubs on AFL players (clause 8, previously clause 5).

36. At all relevant times, Hawthorn's position as employer of the Applicants enabled it to give the Applicants, including through the individuals identified at [12]–[18]:

(a) lawful and reasonable directions, with which the Applicants would have been obliged to comply;

(b) guidance or suggestions, with which it was reasonably to be expected that the Applicants would comply

(collectively, **directions**).

37. Relatedly, at all relevant times, Hawthorn's position:

(a) as an employer of those in leadership positions such as those held by the individuals identified at [12]–[16] and [18] above;

(b) vis-à-vis its President;

allowed it to:

(c) implement in respect of those individuals, and require that those individuals comply with:

(i) anti-racism training, activities and protections;

(ii) other training, activities and protections directed to player and other employee wellbeing;

(d) give such of those people as were its employees lawful and reasonable directions, with which they would have been obliged to comply;

(e) give such people guidance or suggestions, with which it was reasonably to be expected that they would comply.

B.3 Hawthorn's conduct in respect of Mr Carl Peterson

38. Mr Peterson:

(a) was selected by Hawthorn with pick 61 in the 2009 national rookie draft;

(b) was employed by Hawthorn commencing in December 2008;

(c) had sufficient skill and abilities as a football player of that age to have a long and successful career.

39. When Mr Peterson commenced with Hawthorn, he:

(a) was 21 years old;

(b) had been drafted by Richmond Football Club in 2006 (**Richmond**);

(c) had suffered osteitis pubis and was placed on the long-term injury list while at Richmond;

(d) had suffered an injury to his arm requiring stitches;

(e) had been delisted by Richmond in December 2007;

(f) had failed a voluntary drug test organised by Hawthorn in November 2008.

40. Hawthorn knew of each of the matters in the above paragraph.

41. Once at Hawthorn, Mr Burt said to Mr Peterson words to the effect that:

(a) Hawthorn did not believe Mr Peterson should get an agent because of the percentage they charged;

(b) Mr Burt would do it (*i.e.*, the job of an agent) for free.

Particulars

Mr Burt said words to this effect within a few months of Mr Peterson joining Hawthorn.

42. From around January to June 2009, Mr Peterson resided part of the time at a host family house and part of the time at Ms Rotumah's house in Heidelberg, where she lived with her toddler son from a previous relationship.

43. In early 2009, approximately February or March, Mr Peterson and Ms Rotumah found out they were pregnant, but Ms Rotumah later suffered a miscarriage.

44. From around March 2009, Mr Burt would from time to time question Mr Peterson about his life outside of football, including asking Mr Peterson about:

    (a) drugs and alcohol;

    (b) Mr Peterson's perceived lack of financial accountability;

    (c) whether Mr Peterson was seeing Ms Rotumah.

Particulars

Mr Burt would speak to Mr Peterson in person on a weekly basis at the Waverly training facilities.

45. In or about March or April 2009, Mr Burt said to Mr Peterson words to the effect that Hawthorn was opposed to him being in a relationship with Ms Rotumah.

Particulars

Mr Burt said words to this effect at the Waverly training facilities.

46. On or about 3 July 2009, Hawthorn hosted a birthday dinner for Mr Peterson at Hawthorn employee, Mr David Flood's house but did not invite his Indigenous friends or family.

Particulars

Mr Clarkson and another Hawthorn employee, Damian Hardwick, were present.

47. Around July or August 2009, Mr Peterson and Ms Rotumah found out that they were pregnant again.

48. Mr Peterson told Mr Burt about the pregnancy at around 11 or 12 weeks gestation.

49. A few days later, immediately after a training session, Mr Burt told Mr Peterson that the coaches wanted to meet him, but Mr Burt did not otherwise inform Mr Peterson of the purpose of the meeting.

50. Mr Peterson then attended the meeting in a small office at the Hawthorn facilities.

51. Mr Clarkson, Mr Fagan and Mr Burt were present in the room before Mr Peterson arrived.

52. At that meeting:

(a) there was initially some friendly and positive discussion about how impressed the coaches were with Mr Peterson's development and skills as a player;

(b) Mr Burt then informed Mr Peterson that he had shared the Mr Peterson's news with Mr Clarkson and Mr Fagan;

(c) Mr Burt said words to the effect: "Carl, being a father is a huge responsibility and we don't think you're ready to be a father";

(d) Mr Clarkson said words to the effect: "Carl, you need to break up with Nikita and focus only on your football";

Mr Clarkson said words to the effect: "unless you break up with her and tell her to terminate the pregnancy, your football career will be in jeopardy";

(e) Mr Fagan nodded his head during the meeting;

(f) Mr Peterson should give them an answer in the next hour or so.

53. Mr Peterson then:

(a) left the office and went to an area where Hawthorn usually held press conferences;

(b) was highly distressed and anxious about what he had been told;

(c) did not consider, in light of what he had been told and in the circumstances in which he was told those things, that he realistically had any option but to comply;

(d) called Ms Rotumah and said to her words to the effect that he could not be with her anymore and that it was not a good idea that she have the baby.

54. Mr Peterson then said to Mr Clarkson and Mr Burt words to the effect that he had told Ms Rotumah that it was not a good idea to have the baby and not a good idea for them to see each other.

Particulars

This discussion occurred approximately half an hour or more after the initial meeting. Mr Fagan was not present for this discussion.

55. Mr Clarkson and Mr Burt then said to Mr Peterson words to the effect that Mr Peterson would be staying at Mr Burt's house for a few days.

56. Mr Burt then drove Mr Peterson to Mr Burt's house.

57. On the way, Mr Burt:

    (a) purchased a sim card;

    (b) said to Mr Peterson words to the effect that it would be best that Mr Peterson was not able to communicate with his family anymore so he could be 100 per cent focused on his training.

58. Mr Peterson, believing he needed to comply with Mr Burt's instructions, then stayed at Mr Burt's house for a number of nights in an upstairs room.

59. During the time he stayed at Mr Burt's house, Mr Peterson felt that he was being locked away from the outside world and that the only interaction with others that was permitted by Hawthorn was with his teammates at training.

60. About a week later:

    (a) Mr Burt and Mr Flood, met with Ms Rotumah and her mother at Birdy Num Num's café in Carlton;

    (b) Mr Burt said to Ms Rotumah words to the effect that Hawthorn had encouraged Mr Peterson not to be a father at this time.

61. Ms Rotumah did not terminate the pregnancy.

62. In October 2009, Mr Peterson and Ms Rotumah resumed their relationship.

63. In or about January 2010, Mr Burt said to Mr Peterson and Ms Rotumah words to the effect that they should move out of Heidelberg because it was “too rough” and into a “classier” suburb.

Particulars

The conversation with Mr Burt was in person.

64. Because of being so told, in or about January 2010, Mr Peterson and Ms Rotumah moved house to Templestowe.

65. At the time that Mr Peterson and Ms Rotumah moved to Templestowe:

(a) Ms Rotumah was 37 weeks pregnant;

(b) Ms Rotumah was planning an induced birth at 38 weeks due to gestational diabetes.

66. On 8 February 2010, Ms Rotumah gave birth to their son, LP.

67. After Mr Peterson’s son was born, Mr Clarkson:

(a) visited Mr Peterson’s home in Templestowe;

(b) said words to the following effect: “this house is nice, you have the kids’ artwork up and it’s nice and clean. You should invite your teammates over for dinner and things. For all they know you’re living in a shack in the desert somewhere.”

Particulars

Mr Clarkson said words to this effect in the presence of Ms Rotumah.

68. In or about November 2010:

(a) Mr Peterson was delisted by Hawthorn;

(b) Mr Peterson’s employment at Hawthorn ceased.

69. Mr Peterson’s delisting was communicated to him in a meeting with Mr Clarkson, Mr Fagan, Mr Flood and Mr Burt.

70. In or about July 2019:

(a) Mr Peterson took his young family members – his stepson, his two sons, and Ms Rotumah's younger brother – to Hawthorn's training facilities;

(b) while there, they incidentally met Mr Clarkson;

(c) Mr Clarkson pinned Mr Peterson's son LP up against the wall with his forearm on LP's chest and his hand gripping LP's shirt.

B.4 Hawthorn's conduct in respect of Mr Cyril Rioli and Ms Shannyn Ah Sam-Rioli

71. Mr Rioli:

(a) was drafted to Hawthorn in the 2007 draft at 18 years old;

(b) was employed by Hawthorn commencing in 2007.

72. Ms Ah Sam-Rioli and Mr Rioli were in a relationship:

(a) when he was drafted to Hawthorn;

(b) throughout his employment at Hawthorn.

73. Throughout Mr Rioli's time at Hawthorn, Mr Clarkson:

(a) called Mr Rioli "Humphrey B Bear";

(b) thereby associated Mr Rioli with a black bear and chose to publicly refer to him in that way.

74. During Mr Rioli's employment at Hawthorn, Hawthorn employees regularly said things to Mr Rioli that were culturally ignorant.

Particulars

Instances of this kind occurred on various dates in various places. Examples include Mr Clarkson saying to Mr Rioli, when he was sitting with other Indigenous players, words to this effect:

(a) "oh all the brother boys together"

(b) "why don't yous come and sit with everyone else?"

(c) "why are yous always sitting together?"

Other examples of culturally ignorant statements are alleged at [77(e)] and [94] below.

75. Ms Ah Sam-Rioli learned of the matters pleaded in the previous two paragraphs shortly after they occurred.

76. In the off season in mid-November 2011, Mr Rioli was in Darwin enjoying time with his family.

77. Mr Clarkson:

(a) travelled to Darwin to visit Mr Rioli;

(b) attended at Mr Rioli's uncle's house and suggested that Mr Rioli and Mr Clarkson have a meeting at the hotel at which Mr Clarkson was staying;

(c) then drove Mr Rioli to Mr Clarkson's hotel;

(d) in the lobby of the hotel, questioned Mr Rioli about how the off-season was going;

(e) said words to this effect: "be careful not to have babies and understand that your career has just taken off and that a child will disrupt your career or potentially end it".

78. Mr Rioli told Ms Ah Sam-Rioli the facts pleaded in the preceding paragraph in the month after they occurred.

79. Mr Jed Anderson:

(a) is a Warramungu man who was born in Katherine, Northern Territory on 2 February 1994 and who moved to Darwin when he was 12 years of age;

(b) was drafted by Hawthorn in around October 2012;

(c) when he arrived in Melbourne in November 2012 having been drafted by Hawthorn, stayed with Mr Rioli and Ms Ah Sam-Rioli.

80. Mr Anderson's partner Ms Nicki Anderson:

(a) is non-Indigenous;

(b) came down to Melbourne from Darwin to visit Mr Anderson in late November 2012 and also stayed at Mr Rioli and Ms Ah Sam-Rioli's home;

(c) was, at the time, around 5–6 months pregnant.

81. On the same day Ms Anderson arrived in Melbourne and went to Mr Rioli and Ms Ah Sam-Rioli's home, Mr Clark and Mr Burt attended the home unannounced with another Hawthorn employee. Mr Rioli and Ms Ah Sam-Rioli were present for this visit.

82. In the course of that visit, Mr Clarkson:

(a) said to Jason (Mr Rioli's cousin) words to the effect that he was to go upstairs;

(b) said to Ms Anderson, in the presence of Mr Anderson, Mr Rioli and Ms Ah Sam-Rioli words to this effect: "Nicki, it's in the best interests of Jed and Cyril that you do not stay here".

83. Mr Clarkson then said to Mr Anderson and Ms Anderson words to the effect that they should pack Ms Anderson's bags and that Ms Anderson should meet them outside as she had to return to Darwin immediately.

84. In March-April 2013, Ms Ah Sam-Rioli emailed Mr Burt suggesting that Hawthorn should undertake Cultural Awareness and Safety Training.

Particulars

The email was sent from Ms Ah Sam-Rioli's work account at VACCHO.

85. About a week later:

(a) Ms Ah Sam-Rioli asked Mr Burt about her email;

(b) Mr Burt said words to this effect: "I haven't had the chance to check my emails yet".

Particulars

Mr Burt said words to this effect in person after a Hawthorn game.

86. About two or three weeks after Ms Ah Sam-Rioli's email:

(a) Ms Ah Sam-Rioli again asked Mr Burt about her email;

(b) Mr Burt said words to this effect: "yes, I've seen the email. I will get back to you."

Particulars

Mr Burt said words to this effect in person outside the rooms at the MCG. Mr Rioli was present for this conversation.

87. Mr Burt never got back to Ms Ah Sam-Rioli, orally or in writing.

88. At the end of the 2013 season:

(a) At an end of season player's trip, an Indigenous player (Mr Bradley Hill) was asked by a non-Indigenous player (Mr Grant Birchall) whether Mr Hill's partner was also a "boong";

(b) Mr Hill told Mr Rioli of this comment at the first pre-season training session around late November 2013;

(c) Mr Hill told Ms Ah-Sam Rioli of this comment within a week of telling Mr Rioli about it;

(d) Hawthorn did not take any action in response to this incident.

89. From no later than 2015:

(a) Mr Rioli felt culturally unsafe at Hawthorn;

(b) Ms Ah Sam-Rioli felt culturally unsafe at Hawthorn;

(c) Ms Ah Sam-Rioli did not participate in so-called "WAGs" (wives and girlfriends) events as a result of feeling culturally unsafe;

(d) Mr Rioli was questioned about Ms Ah Sam-Rioli's non-participation in so-called "WAGs" events;

(e) Ms Ah Sam-Rioli would, at Hawthorn events, stand at a distance, at the back or in the corner, to allow time for her to prepare if someone was to approach her;

(f) Mr Rioli would not leave Ms Ah Sam-Rioli alone for long at Hawthorn events, including after games.

90. On or about 3 April 2016:

(a) Ms Ah Sam-Rioli took Mr Rioli's nephew to the players' change rooms to see Mr Rioli;

(b) Mr Rioli's nephew, who is Indigenous, was 13 or 14 years old at the time;

(c) a Hawthorn employee asked to see their wrist bands, pointed at the young boy and said: "now you behave yourself when you go in there".

91. The next weekend:

(a) Ms Ah Sam-Rioli recounted the incident pleaded at [90] to Mr Clarkson;

(b) Ms Ah Sam-Rioli said words to the effect of asking Mr Clarkson if he would be open to Cultural Awareness and Safety Training for himself and Hawthorn;

(c) Mr Clarkson nodded a few times and kept walking, and did not otherwise respond.

92. In 2017, Mr Rioli's father had a heart attack and Mr Rioli and other family members, including Ms Ah Sam-Rioli, gathered in Alice Springs.

93. Mr Clarkson, unannounced, attended the Alice Springs hospital where Mr Rioli's father was located.

94. During his visit to Alice Springs, Mr Clarkson said to Mr Rioli words to this effect: "why do these Aboriginals have darker skin that you?".

Particulars

Mr Clarkson said words to this effect in Todd Mall, in the Alice Springs CBD.

95. Mr Rioli told Ms Ah Sam-Rioli the facts pleaded in the preceding paragraph on the same day they occurred.

96. On or about 2 June 2018:

(a) Ms Ah Sam-Rioli attended Hawthorn's game in the Indigenous round at Launceston Oval, Tasmania;

(b) in the Launceston airport after the game, Mr Kennett said to Ms Ah Sam-Rioli, concerning her ripped jeans, words to this effect:

(i) "can't you afford to buy thread?"

(ii) while grabbing his pocket, "I'll give you change so you can afford to buy thread to stitch those jeans up".

Particulars

Mr Kennett said words to this effect in the presence of Ms Ah Sam-Rioli's brother Peter and Ms Jennifer "Lulu" Coombes and her two sons.

97. Mr Rioli learned of the facts pleaded in the above paragraph shortly after they occurred.

98. Because of this incident, and against the background of the other matters alleged at [71] to [95] above, on 6 June 2018:

(a) Mr Rioli did not attend training;

(b) Mr Rioli requested two weeks leave from training so that he and Ms Ah Sam-Rioli could return to Darwin to a culturally safe space;

(c) Mr Rioli and Ms Ah Sam-Rioli started giving serious consideration to whether Mr Rioli should stop playing for Hawthorn in light of this final straw.

99. On or about 10 June 2018, Mr Wright attended Ms Ah Sam-Rioli's mother's house in Darwin.

100. During a conversation with Ms Ah Sam-Rioli there, Mr Wright said to Ms Ah Sam-Rioli words to the effect that her reaction to the incident may be the result of being triggered from a past event or her childhood.

101. On or about 23 June 2018, Mr Clarkson:

(a) telephoned Ms Ah Sam-Rioli's mother and spoke to her younger sister Jordan;

(b) said to Jordan words to the effect of asking her to fly down to Melbourne to talk to Mr Rioli and Ms Ah Sam-Rioli to try to convince Mr Rioli not to resign from his employment at Hawthorn.

102. On or about 25 June 2018, Mr Rioli received a text message from an employee of the Hawthorn media team, Clare Pettyfor, which was to the effect (*inter alia*) that Mr Rioli and Ms Ah Sam-Rioli had to sit down with Mr Kennett or Hawthorn would leak the story to control the narrative.

Particulars

Copies of the text messages are no longer available to Mr Rioli.

103. On or about 29 June 2018:

(a) Mr Rioli and Ms Ah Sam-Rioli met with Mr Kennett concerning the incident described in [96] above;

(b) in that meeting, Mr Kennett said (*inter alia*) words to this effect: "I can't help how you feel".

104. In order to protect himself, Ms Ah Sam-Rioli and his family from what had become a culturally unsafe environment at Hawthorn, Mr Rioli decided to end his employment at Hawthorn in June 2018.

105. After his retirement, from around 19 July 2019, Hawthorn used Mr Rioli's image in its Reconciliation Action Plan without his consent or otherwise consulting him.

Particulars

The Reconciliation Action Plan was published on 19 July 2019 and is publicly available. Mr Rioli's image appears on pages 7, 8 and 12.

106. In or about April 2022, Mr Rioli texted Mr Kennett requesting that the images of him be removed from the Reconciliation Action Plan.

Particulars

Copies of the text messages are no longer available to Mr Rioli.

B.5 Hawthorn's conduct in respect of Mr Jermaine Miller-Lewis and Ms Montanah-Rae Lewis

107. Mr Miller-Lewis:

(a) was drafted to Hawthorn in the 2014 national rookie draft;

(b) was employed by Hawthorn commencing in 2014.

108. Ms Lewis was in a relationship with Mr Miller-Lewis:

(a) when he was drafted to Hawthorn;

(b) throughout his employment at Hawthorn.

109. When Mr Miller-Lewis was drafted:

(a) Mr Miller-Lewis and Ms Lewis were both 18 years' old;

(b) Ms Lewis was 7 months pregnant, with a due date of 12 January 2015.

110. In or about December 2014 at the Hawthorn facilities at Waverly Park, Mr Miller-Lewis had a conversation with Mr Matthews, in which conversation:

(a) Mr Miller-Lewis told Mr Matthews that Ms Lewis was pregnant;

(b) Mr Matthews said words to the effect that he was shocked by the pregnancy and that Mr Miller-Lewis needed to let Mr Burt know immediately;

111. On or about the same day, Mr Miller-Lewis then had a conversation with Mr Burt at the Hawthorn facilities at Waverly Park, with Mr Matthews present, in which conversation:

(a) Mr Miller-Lewis told Mr Burt how excited he was for the arrival of his first child and stated that he was ready to be a father;

(b) Mr Burt said:

(i) "are you really ready to be a father?", or words to that effect;

(ii) that it would be very challenging for Mr Miller-Lewis to be a father and a footballer so early in his career;

(iii) words to the effect that he was shocked by the pregnancy.

112. In December 2014:

(a) Mr Miller-Lewis relocated from Perth to Melbourne and lived with Mr Egan and Mr Egan's partner;

(b) Ms Lewis remained in Perth;

(c) Mr Miller-Lewis and Ms Lewis intended that Ms Lewis would move to Melbourne to live with Mr Miller-Lewis.

113. Mr Miller-Lewis had not previously lived away from his family and had no family or cultural support in Melbourne.

114. Mr Miller-Lewis understood and believed that he needed to comply with directions and requests made of him by Hawthorn (including its employees) or he would put his position with Hawthorn at risk.

Particulars

For example, Mr Miller-Lewis had to seek permission to visit Ms Lewis.

115. On 20 January 2015, Hawthorn permitted Mr Miller-Lewis to travel back to Perth to be with Ms Lewis for the birth of their child.

116. On 22 January 2015, Ms Lewis gave birth to the couple's daughter, Aryana.

117. On or about 24 or 25 January 2015, Mr Matthews telephoned Mr Miller-Lewis and said words to the effect that Mr Miller-Lewis needed to come back to Melbourne to resume pre-season training immediately.

118. Although Mr Miller-Lewis wished to stay with Ms Lewis and their new baby, because of the call from Mr Matthews Mr Miller-Lewis returned to Melbourne shortly thereafter.

119. On or about 2 February 2015, Ms Lewis:

(a) became ill with mastitis;

(b) had an allergic reaction to the antibiotics prescribed to treat the mastitis.

120. On or about 5 February 2015:

(a) Ms Lewis' mastitis became so severe that her right breast burst and most of the breast tissue was hanging out of the wound;

(b) Ms Lewis was admitted to Swan District Hospital (now called St John of God Hospital, Midland);

(c) Ms Lewis received major surgery, requiring her to remain in hospital until around 9 February 2015.

121. For 6 – 8 weeks after the surgery, Silver Chain Home Health attended Ms Lewis at her home every day to pack the open wound on her right breast.

122. Mr Miller-Lewis said to Mr Matthews words to the effect that he was very stressed about Ms Lewis's health.

123. Neither Mr Matthews nor any Hawthorn employee asked if Mr Miller-Lewis would like to return to Perth to be with Ms Lewis and their baby as Ms Lewis recovered, or offered Mr Miller-Lewis any other support in connection with Ms Lewis's health issues.

124. On or about late January or early February 2015, Mr Miller-Lewis was selected to play in the AFL Indigenous All Stars game, to be held on 13 February 2015 in Perth.

125. On or about 6 February 2015, Mr Miller-Lewis arrived in Perth and in the week prior to the game and participated in a week of leadership, industry and cultural activities.

126. On or about 6 February 2015, Mr Miller-Lewis and Mr Matthews had a number of conversations in which:

(a) Mr Miller-Lewis asked for permission to stay with Ms Lewis in Perth, rather than at the team accommodation;

(b) Mr Matthews said words to the effect that Mr Miller-Lewis was not allowed to stay with Ms Lewis and that he had to stay with the team;

(c) Mr Miller-Lewis repeated his request a number of times;

(d) Mr Matthews rejected these repeated requests.

127. In defiance of the position expressed by Mr Matthews, Mr Miller-Lewis:

(a) did stay with Ms Lewis and their baby on the trip to Perth for the Indigenous All Stars game;

(b) woke at around 4am each day so that Ms Lewis could drop Mr Miller-Lewis back at the team accommodation.

128. During the time Mr Miller-Lewis was in Perth, Mr Matthews:

(a) said to Mr Miller-Lewis that Mr Matthews had learned that Mr Miller-Lewis had stayed with Ms Lewis;

(b) said words to the effect that Hawthorn was unhappy that Mr Miller-Lewis and Ms Lewis had not followed what they had been told by Hawthorn.

129. After Mr Miller-Lewis's return to Melbourne from the Indigenous All Stars game, but during the first half of 2015:

(a) Mr Miller-Lewis and Ms Lewis made requests of Mr Matthews that Ms Lewis (and the baby) be permitted to visit Melbourne;

(b) the requests were made 2 to 5 times per month;

(c) Mr Matthews refused each request;

(d) Mr Matthews, on one occasion of refusing such a request, said words to Ms Lewis to the effect that, for Ms Lewis and their baby to visit would be a distraction to Mr Miller-Lewis's career;

(e) Mr Matthews, on one occasion of refusing such a request, questioned how Ms Lewis thought she could afford the travel with her baby (or words to that effect).

130. In or around March and April 2015, both Ms Lewis, and Mr Miller-Lewis's mother Ms Teresa Miller, became increasingly concerned about his mental health, including because of his isolation from family and the absence of any cultural support.

131. Around April 2015, Ms Miller, approached Mr Matthews with a proposal that she and Ms Lewis (and the baby) move to Melbourne to provide Mr Miller-Lewis with the support of his immediate family. Hawthorn refused.

Particulars

The proposal was made by phone call and text messages. Copies of the text messages are no longer available to Ms Miller.

132. In relation to the proposal identified in [131] above:

(a) in or about March or April 2015, Mr Matthews said to Ms Lewis and Mr Miller-Lewis words to the effect of asking how they would be able to afford to live in Melbourne;

(b) in or about March or April 2015, Mr Matthews said to Ms Lewis on the phone that the family could not afford to relocate to Melbourne.

133. As a result of the interactions with Mr Matthews alleged at [132] above, neither Ms Lewis nor Ms Miller moved to Melbourne at that time, and Mr Miller-Lewis remained without any family or cultural support in Melbourne.

134. In early 2015:

(a) Mr Miller-Lewis spoke to Ms Miller about having a player manager/mentor;

(b) Mr Miller-Lewis suggested his uncle Mr Chris Lewis, a former star AFL player.

135. Mr Miller-Lewis then met with Mr Lewis and they spoke about what supports could be put in place for Mr Miller-Lewis.

136. In or about 2015:

(a) Mr Miller-Lewis made it known to Hawthorn that he wanted to engage a player agent, in particular Mr Lewis;

(b) Mr Burt said words to the effect that Mr Miller-Lewis "was just a rookie draft with a one-year contract" and that it was not necessary at that time to obtain a player manager/mentor.

Particulars

Ms Miller was present for this conversation.

137. As a result of Hawthorn's reaction to his proposal to engage a player agent, Mr Miller-Lewis did not pursue this further in 2015.

138. In early February 2015, ahead of her and Mr Miller-Lewis' birthday on 23 February 2015, Ms Lewis requested of Mr Matthews that she be allowed to visit Mr Lewis in Melbourne.

139. In the following weeks, Ms Lewis had additional conversations with Mr Matthews in which Mr Matthews said words to the effect that he would only consent to Ms Lewis visiting for a short time – no more than two weeks – because he did not want her and the baby to distract Mr Miller-Lewis.

Particulars

These communications were by text and phone call. Copies of the text messages are no longer available to Ms Lewis.

140. On or about 15 April 2015, Mr Matthews booked flights for Ms Miller, Ms Lewis and the baby to arrive in Melbourne on Monday 18 April 2015.

141. In April or May 2015:

(a) Ms Lewis and the baby travelled to Melbourne and stayed with Mr Miller-Lewis at the Egans' house;

(b) at the end of the visit, Mr Miller-Lewis and Ms Lewis decided that Ms Lewis and the baby should stay in Melbourne;

(c) Mr Miller-Lewis texted Mr Matthews words to the effect that that Ms Lewis did not get on her flight and that they were both too upset and did not want to be separated;

(d) Mr Matthews texted Mr Miller-Lewis words to the effect "Get Montanah on that flight!";

(e) Mr Matthews and Mr Burt telephoned Mr Miller-Lewis and each said words to the effect that Ms Lewis needed to get on a flight back to Perth immediately and that she had no other option;

(f) a Hawthorn employee rescheduled Ms Lewis's flight to the next day or a few days later;

(g) against the wishes of Mr Miller-Lewis and Ms Lewis, but as a result of the exchange with Mr Matthews and Mr Burt, Ms Lewis returned to Perth.

Particulars

Copies of the text messages are no longer available to Mr Miller-Lewis or Ms Lewis.

142. Two days after Ms Lewis's return to Perth, Mr Matthews informed Mr Miller-Lewis that he had to attend a meeting.

143. A meeting then occurred at which:

(a) Mr Burt and Mr Matthews were present;

(b) no indigenous liaison officer or support person for Mr Miller-Lewis was present;

(c) Mr Burt said to Mr Miller-Lewis words to the following effect:

(i) "Jermaine, you failed that test";

(ii) Mr Miller-Lewis needed to be "more cut throat" when it came to his family;

(iii) Mr Miller-Lewis would need to "choose between [his] family and [his] career at the Club";

(d) Mr Burt said the words pleaded above aggressively, pointing his finger at Mr Miller-Lewis and yelling.

Particulars

The meeting occurred in Mr Burt's office after a training session.

144. After this meeting:

(a) Mr Miller-Lewis's mental health declined;

(b) Mr Miller-Lewis spoke with Hawthorn's club psychologist – who in 2015 was Anthony Klarica and in 2016 was another person – about feeling depressed, isolated, and separated, wanting and needing his family with him, the cultural necessity of staying connected to his family, not "feeling like himself" because of being separated from his cultural kinship;

(c) Ms Miller and Ms Lewis raised Mr Miller-Lewis' mental health with Mr Matthews on multiple occasions;

(d) Mr Matthews referred Mr Miller-Lewis to a psychologist, Dean Janover, in 2016;

(e) Mr Miller-Lewis saw the psychologist on a weekly basis until the end of his employment with Hawthorn.

145. In December 2015:

(a) Hawthorn offered Mr Miller-Lewis an extension to his rookie contract;

(b) Mr Miller-Lewis accepted;

(c) Mr Miller-Lewis moved into his own rental house;

(d) Ms Lewis and Aryana moved to Melbourne, arriving on 24 December 2015.

146. On or about 12 April 2016, Mr Miller-Lewis's family in Western Australia:

(a) informed Mr Miller-Lewis and Ms Lewis that Mr Miller-Lewis' grandfather was very unwell and would be having surgery on the morning of 18 April 2016;

(b) urgently asked him to return to Perth

147. On or about 12 April 2016:

(a) Mr Miller-Lewis and Ms Lewis asked Mr Matthews for urgent help to travel to Perth to see Mr Miller-Lewis's grandfather in hospital;

(b) Hawthorn did not substantively respond for a number of days.

148. On 18 April 2016, at 1:00am, Mr Miller-Lewis and Ms Lewis arrived in Perth, by which time Mr Miller-Lewis's grandfather was already in surgery.

149. Mr Miller-Lewis and Ms Lewis were unable to see his grandfather before he passed away.

150. On 20 April 2016, Mr Miller-Lewis and Ms Lewis were required to return to Melbourne.

151. As a result of the prompt return flight, Mr Miller-Lewis was unable to participate in any cultural ceremonies or practices in respect of the death of his grandfather..

152. In August 2016, Mr Miller-Lewis and Ms Lewis:

(a) learned that they were expecting a second child;

(b) did not tell Hawthorn.

153. In or around late 2016, Hawthorn required its players to attend a pub or restaurant. Mr Miller-Lewis was anxious about the event because of past traumatic around events involving alcohol. Ms Lewis drove him to the event but he left early.

154. After he left the event, Mr Burt sent him a text to the effect that he was "disappointed" in Mr Miller-Lewis for not being more sociable outside of the football club, and for failing to spend time with other players.

Particulars

Copies of this text message are no longer available to Mr Miller-Lewis.

155. Throughout Mr Miller-Lewis's employment at Hawthorn:

(a) Mr Clarkson:

(i) nicknamed Mr Miller-Lewis "JJ", referencing a black character from the 1970s Television show "Good Times."

(ii) frequently said "JJ Dynamite" to Mr Miller-Lewis, referencing that character's catchphrase, "Dyn-o-mite!".

(b) Mr Matthews conveyed views on Mr Miller-Lewis's personal life to Mr Miller-Lewis, Ms Lewis and other members of Mr Miller-Lewis's family.

Particulars

For example, Mr Matthews conveyed his views as to whether Ms Lewis and Ms Miller should visit and live with Mr Miller-Lewis.

(c) Hawthorn set an expectation that Mr Miller-Lewis and Ms Lewis would seek permission or approval from the Club on decisions they made in their personal lives.

Particulars

For example, Hawthorn set an expectation that Mr Miller-Lewis and Ms Lewis would seek permission or approval before Ms Lewis visited Mr Miller-Lewis in Melbourne.

156. Mr Miller-Lewis's employment at Hawthorn ceased in 2016 when he was delisted.

157. Mr Miller-Lewis was informed of his delisting at a meeting at which:

(a) Mr Clarkson and Mr Burt were present;

(b) Mr Clarkson said words to the effect that Mr Miller-Lewis had a lot going for him, both inside and outside of football;

(c) Mr Clarkson said words to the effect that: “There are people at this club that don't deserve a second chance but will get one…And then there are people like you, who deserve a second chance, but will not get one”;

158. Mr Matthews and Mr Miller-Lewis had conversations about Mr Miller-Lewis’ delisting in which:

(a) Mr Matthews said words to the effect that while there were other players that Hawthorn worry about and hold concern for in regards to their mental wellbeing and transitioning out of AFL life, but that Mr Miller-Lewis would be fine;

(b) Mr Matthews gave Mr Miller-Lewis a pamphlet which included informatiOn or about support services available in the event of delisting.

Particulars

The pamphlet is the AFL Players Association Transition Services Guide.

159. Hawthorn:

(a) did not, through any of its employees or otherwise, guide Mr Miller-Lewis through the transition process nor offer Mr Miller-Lewis any support services;

(b) initially refused to pay for Mr Miller-Lewis’s relocation costs;

(c) only agreed to do so after he complained.

160. Mr Miller-Lewis and Ms Lewis returned to Perth.

161. Despite Mr Miller-Lewis being delisted, Hawthorn kept an artwork of his and prominently displayed it.

Particulars

The artwork featured the Hawthorn mascot, surrounded by a detailed dog painting.

Mr Matthews asked Mr Miller-Lewis to complete the artwork in 2016.

Mr Matthews displayed the artwork in front of his office, near the club's lift entry.

162. Hawthorn:

(a) did not pay Mr Miller-Lewis for the painting or the right to display it;

(b) initially would not return the painting to him, despite a request to Mr Matthews in June 2021 by him and Ms Lewis;

(c) only returned it to him on 13 March 2022 after another request to Mr Matthews on 25 February 2022, which was reiterated on 9 March 2022.

Particulars

The requests were by phone call and text message.

B.6 Hawthorn's conduct in respect of Mr Leon Egan

163. Mr Egan is a Yorta Yorta/Bangerang, Wiradjuri and Gunditjmara man.

164. In 2012:

(a) Mr Burt approached Mr Egan to act as an Indigenous mentor/adviser to Hawthorn's Indigenous players.

(b) Mr Egan was contractually engaged by Hawthorn to provide services one day per week to manage and monitor the welfare of Indigenous players and support their development.

(c) Mr Egan provided these services through his consulting company, EEGAKAT Consulting.

165. Thereafter:

(a) from 1 February 2013 to 31 October 2013, Mr Egan was again contractually engaged by Hawthorn to provide services through his consulting company one day per week to manage and monitor the welfare of Indigenous players and support their development.

(b) in 2014, Mr Egan was formally employed by Hawthorn for 5 hours per week pursuant to a Memorandum of Understanding (**MOU**) with AFL SportsReady, during which time his roles were:

(i) mentoring of Indigenous players;

(ii) career development of Indigenous players;

(iii) cultural awareness;

(iv) supporting the Indigenous round and NAIDOC week;

(v) representing Indigenous players' interests.

(c) in 2015 until his resignation in October of that year, Mr Egan continued to be employed by Hawthorn pursuant to the MOU.

166. From 2012 to 2015, Mr Egan's duties also included, from time to time, acting, together with his wife, as a "host family" for Indigenous players employed by Hawthorn.

167. Before accepting the engagement in 2012, and during the engagement and then employment, Mr Burt and Mr Egan regularly discussed the role becoming a full-time role.

168. The role never became a full-time role.

169. There was no equivalent mentor/adviser role for non-Indigenous players.

170. Despite Mr Egan's duties, throughout Mr Egan's engagement and employment at Hawthorn:

(a) Mr Egan was not included in decision-making about the Indigenous players in respect of whom he was engaged and employed to advise and mentor;

Particulars

These include Mr Anderson, Mr Dayle Garlett and Mr Miller-Lewis.

In regard to Mr Anderson, for example, Mr Egan was not included in – or even informed of – decision-making as to whether Mr Anderson's wife and child should be in Melbourne with Mr Anderson (see [79]–[83] above).

In regard to Mr Garlett, for example, Mr Egan was not included in decision-making as to his drafting, or his treatment by Hawthorn after his delisting.

In regard to Mr Miller-Lewis, for example, Mr Egan was not included in decision-making as to Ms Lewis and their child should be in Melbourne with Mr Miller-Lewis (see [129]–[143] above).

(b) Mr Egan was told not to intervene or follow up with one Indigenous player – Mr Lance Franklin – experiencing issues in his personal life;

Particulars

When Mr Franklin was experiencing issues in his personal life and was charged with driving offences in 2012, Mr Burt told Mr Egan not to intervene or follow up with Mr Franklin.

(c) because of his limited employment hours, Mr Egan was not able to advise and mentor Indigenous players as actively as he considered appropriate to fulfil his role;

Particulars

Two of the players whom Mr Egan was not able to advise and mentor as actively as he considered appropriate were Mr Derrick Wanganeen and Mr Amos Frank.

(d) Hawthorn regularly did not respond to, or act on the opinions Mr Egan expressed about Hawthorn's actions regarding Indigenous issues;

Particulars

Mr Egan's position description included 'running cultural awareness training with all facets of the club to learn and engage in cross-cultural sessions'. Mr Egan was only able to run one such training session, in 2013 for approximately 15 administrative staff. On multiple occasions from 2013 to 2015, Mr Egan suggested to Mr Burt that Hawthorn hold such training sessions for all players, senior management, general staff and the Board. Mr Egan was only able to run two staff training sessions and one player training session in 2015 (the player session being for non-interstate travelling players).

(e) Hawthorn regularly did not facilitate Mr Egan's requests to be better informed of Hawthorn's actions on Indigenous issues;

Particulars

In 2015, Mr Egan asked Mr Burt to see, but was not provided with, progress reports sent to the Epic Good Foundation in regard to their donation, over the five years from 2015, of $1M to Hawthorn to support Indigenous programs.

(f) Mr Egan was not recognised for his work, including his role in facilitating the Epic Good Foundation event, at which the donation was officially announced in May 2015;

(g) Mr Egan was not invited with other Hawthorn staff to celebrate any of the three premierships Hawthorn won while he was employed;

(h) Mr Egan never met with Mr Clarkson or Mr Fagan.

171. On 23 May 2015, during a game between Hawthorn and Sydney Swans, Hawthorn supporters booed Adam Goodes repeatedly.

172. At the time, Mr Goodes was generally regarded as one of the greatest Indigenous players of his time.

173. Shortly after the game:

(a) Hawthorn Indigenous players Mr Rioli, Mr Shaun Burgoyne, Mr Anderson and Mr Hill:

(i) posted on social media with a message calling out racism;

(ii) requested that Mr Egan relay a request for a public statement from the Hawthorn CEO, Stewart Fox, and President, Andrew Newbold, about the incident to express the club's support for Indigenous players and address the booing;

(b) Mr Egan relayed that request to Mr Matthews and Mr Burt;

(c) no public statement was issued by the CEO or President.

174. Several days after the game, Hawthorn released a video statement of Mr Luke Hodge about the booing.

175. Hawthorn Indigenous players Mr Rioli, Mr Burgoyne, Mr Anderson, Mr Hill and Mr Wanganeen then informed Mr Egan that they:

(a) considered Hawthorn's response to the booing incident to have been inadequate;

(b) intended to boycott the following game.

176. On or about 27 May 2015, Mr Rioli, Mr Burgoyne, Mr Anderson, Mr Hill and Mr Miller-Lewis attended Mr Egan's home at his invitation to discuss their views of Hawthorn's response the booing incident and their intention to boycott the following game.

177. Mr Clarkson:

(a) invited himself to the meeting at Mr Egan's home;

(b) imposed himself on, and derailed, the meeting, by bringing his guitar and singing a song about Mr Rioli;

(c) discouraged the players from going through with the boycott.

Particulars

The group of players and Mr Egan were sitting around Mr Egan's dining table, discussing the potential boycott, when Mr Egan received a phone call from Mr Clarkson asking if he could come over to Mr Egan's house. Mr Egan consented. One minute later, Mr Clarkson knocked on the door and entered the house with his guitar.

178. Hawthorn took no steps to:

(a) support its Indigenous players in relation to the treatment of Mr Goodes and its impact on them.

(b) take into account their wishes about how Hawthorn might respond to the treatment of Mr Goodes.

179. Early in the 2015 grand final week:

(a) Mr Egan telephoned Mr Burt and said words to the effect of asking how Mr Egan was to get his wristband to be able to enter the team change rooms after the game;

(b) Mr Burt said to Mr Egan words to the effect that Mr Egan would not be able to access the rooms as access was only for players' families;

(c) Mr Egan said words to the effect that he was family to the Indigenous players;

(d) Mr Burt did not respond.

180. Mr Egan's employment with Hawthorn ceased in 2015 when he resigned two weeks after the grand final.

B.7 Hawthorn's subsequent conduct

181. On 7 June 2019, in a public statement ahead of the premiere of two films about the racism experienced by Mr Goodes, Hawthorn (among other clubs, along with the AFL) made a public statement:

(a) recognising that racism, on and off the field, continues to have a traumatic and damaging impact on Indigenous players and communities;

(b) acknowledging that, in Mr Goodes' case, the collective failure (of the AFL and the clubs) to call out racism and stand up for the player the subject of it had the result of letting down all Indigenous players, past and present;

(c) pledging to continue to fight all forms of racism and discrimination, on and off the field;

(d) committing to standing strongly with all in the football community who experience racism or discrimination;

(e) committing to listening to Indigenous players and communities to learn about the impacts of racism;

(f) promising to continue to work to ensure a safe and inclusive environment where Australian rules football is played;

(g) stating that it never wanted to see the mistakes of the past repeated.

Particulars

The statement was in writing and is publicly available.

182. In or about May 2022, Hawthorn commissioned a review into cultural safety of past and present players and staff at Hawthorn (**Binmada review**).

183. In August 2022, Hawthorn received the findings and recommendations of the Binmada review, which included:

(a) findings of negligence and human rights abuses towards Indigenous Hawthorn players committed by Hawthorn employees including between 2010 and 2015;

(b) a recommendation that these findings be immediately reported to the AFL integrity unit;

(c) a recommendation that Hawthorn develop and offer a reparation and restitution package, including financial reparations and an official public apology;

(d) a recommendation that Indigenous cultural immersion training be made compulsory for all Hawthorn players, staff and board members on inductions and at least twice a year.

184. On 21 September 2022, Hawthorn made a public statement that:

(a) acknowledged that the Binmada review raised disturbing historical allegations that required further investigation;

(b) did not apologise.

185. In October 2022, the AFL appointed an independent investigation panel (the **Investigation Panel**) under r 3.1 of the Rules to investigate, consider and report on allegations of inappropriate treatment of Hawthorn players and their families and/or partners.

186. The investigation was to address, among other matters, whether during the period 1 January 2008 to 31 December 2016, or such further period as the investigation panel considered to be appropriate, Hawthorn engaged in any of the following conduct directed towards players, their families and/or their intimate partners:

(a) racist behaviour;

(b) bullying, and/or intimidatory conduct whether towards Hawthorn listed players, and/or their intimate partners, friends or families;

(c) inappropriate intrusion upon or purported control (including coercive control), over the family, cultural and/or non-football lives and wellbeing of Hawthorn listed players and/or their intimate partners, friends and families;

(d) racialised and/or gendered stereotyping directed towards First Nations players, their families and intimate partners.

187. On or about 27 May 2023, Mr Burt spoke to a journalist for the purposes of an article that was published in *The Age* on 27 May 2023. Mr Burt told the journalist "I've got nothing to say sorry for".

Particulars

The article was authored by Jake Niall and titled "'I've got nothing to say sorry for': Jason Burt responds to Hawthorn allegations".

188. On 31 May 2023, Mr Burt published a post on Facebook that:

(a) described the subject of the Investigation Panel as "a case of four men (former players) that spent time at Hawthorn who all needed substantial guidance, support and care";

(b) described the Binmada report as a disgrace;

(c) did not apologise.

Particulars

The post was published on Mr Burt's Facebook page and was public.

189. On 30 May 2023, by agreement between the complainants and the AFL, the AFL terminated the Investigation Panel, but in doing so acknowledged in a public statement the hurt, pain and anguish felt by the complainants following their time at Hawthorn.

Particulars

The statement was in writing and is publicly available.

190. On the same day, Hawthorn responded in a public statement in which it:

(a) committed to listen and learn to ensure it creates an inclusive environment for First Nations people;

(b) did not apologise.

Particulars

The statement was in writing and is publicly available.

191. Hawthorn has not publicly apologised for the conduct the subject of the Binmada review, the Investigation Panel and/or the conduct the subject of this statement of claim.

C. UNLAWFUL DISCRIMINATION

C.1 Carl Peterson

C.1.1 Personal control conduct—Hawthorn vicarious liability

192. The acts pleaded in [41], [44], [45], [46], [49]–[52], [55]–[57], [60], [63] and/or [67]:

(a) were acts done by employees or agents of Hawthorn in connection with their duties as employees or agents;

(b) constituted the persons undertaking those acts exercising control over Mr Peterson's personal life (**personal control conduct**).

193. The personal control conduct involved a distinction, restriction, or preference based on race (*viz*, Mr Peterson's Aboriginality).

194. The personal control conduct had the effect of nullifying or impairing Mr Peterson's recognition, enjoyment or exercise, on an equal footing, of the following human rights in the economic and/or cultural fields of public life:

(a) the right to just and favourable conditions of work, including to safe and healthy working conditions;

(b) the right to private life (including to personal integrity, family privacy, autonomy, and reputation).

195. In the premises:

(a) the personal control conduct would be unlawful by reason of s 9(1) of the *Racial Discrimination Act 1975* (Cth) (**RD Act**) if it were done by Hawthorn;

(b) by reason of s 18A of the RD Act, the RD Act applies to Hawthorn as if Hawthorn had also engaged in the personal control conduct;

(c) Hawthorn has engaged in unlawful conduct within the meaning of s 9(1) of the RD Act.

196. Alternatively:

(a) in undertaking the personal control conduct, the people who were so undertaking were acting or purporting to act on behalf of Mr Peterson's employer, Hawthorn;

(b) non-Indigenous Hawthorn players otherwise in the same or similar circumstances would not have been subjected to the same or a similar level of close control over their personal lives;

(c) in these premises, the personal control conduct constituted a failure, by reason of race, to afford to Mr Peterson the same conditions of work as were made available for:

(i) non-Indigenous Hawthorn players otherwise in the same or similar circumstances;

(ii) accordingly, other persons having the same qualifications and employed in the same circumstances on work of the same description as Mr Peterson.

197. In the premises:

(a) the personal control conduct would be unlawful by reason of s 15(1)(b) of the RD Act if it were done by Hawthorn;

(b) by reason of s 18A of the RD Act, the RD Act applies to Hawthorn as if Hawthorn had also engaged in the personal control conduct;

(c) Hawthorn has engaged in unlawful conduct within the meaning of s 15(1)(b) of the RD Act.

C.1.2 Personally harmful conduct—Hawthorn vicarious liability

198. Further or alternatively, the acts pleaded in [41], [44], [45], [46], [49]–[52], [55]–[57], [60], [63], [67] and/or [70]:

(a) were acts done by employees or agents of Hawthorn in connection with their duties as employees or agents;

(b) constituted the persons undertaking those acts doing acts harmful to Mr Peterson's psychological integrity, privacy, and autonomy (**personally harmful conduct**).

199. The personally harmful conduct involved a distinction, restriction, or preference based on race (*viz*, Mr Peterson's Aboriginality).

200. The personally harmful conduct had the effect of nullifying or impairing Mr Peterson's recognition, enjoyment or exercise, on an equal footing, of the following human rights in the economic and/or cultural fields of public life:

(a) the right to just and favourable conditions of work, including to safe and healthy working conditions;

(b) the right to private life (including to personal integrity, privacy, autonomy, reputation, family).

201. In the premises:

(a) the personally harmful conduct would be unlawful by reason of s 9(1) of the RD Act if it were done by Hawthorn;

(b) by reason of s 18A of the RD Act, the RD Act applies to Hawthorn as if Hawthorn had also engaged in the personally harmful conduct;

(c) Hawthorn has engaged in unlawful conduct within the meaning of s 9(1) of the RD Act.

202. Alternatively:

(a) in undertaking the personally harmful conduct, the people who were so undertaking were acting or purporting to act on behalf of Mr Peterson's employer, Hawthorn;

(b) non-Indigenous Hawthorn players otherwise in the same or similar circumstances would not have been subjected to the same or a similar level of personally harmful conduct;

(c) in these premises, the personally harmful conduct constituted a failure, by reason of race, to afford to Mr Peterson the same conditions of work as were made available for:

(i) non-Indigenous Hawthorn players otherwise in the same or similar circumstances;

(ii) accordingly, other persons having the same qualifications and employed in the same circumstances on work of the same description as Mr Peterson.

203. In the premises:

(a) the personally harmful conduct would be unlawful by reason of s 15(1)(b) of the RD Act if it were done by Hawthorn;

(b) by reason of s 18A of the RD Act, the RD Act applies to Hawthorn as if Hawthorn had also engaged in the personally harmful conduct;

(c) Hawthorn has engaged in unlawful conduct within the meaning of s 15(1)(b) of the RD Act.

C.1.3 Family control and interference—Hawthorn vicarious liability

204. Further or alternatively, the acts pleaded in [44(c)], [45], [49]–[52], [55]–[57], [60], [63], and/or [67] constituted the persons undertaking those acts exercising control over, and interfering in, Mr Peterson's family life (**family control and interference conduct**).

205. The family control and interference conduct involved a distinction, restriction, or preference based on race (*viz*, Mr Peterson's Aboriginality).

206. Alternatively to [205]:

(a) the acts pleaded in [44(c)], [45], [49]–[52], [55]–[57], [60], [63], and/or [67] constituted the persons undertaking those acts requiring Mr Peterson to comply with a condition or requirement concerning his family life (**family control requirement**) that was not reasonable having regard to the circumstances;

(b) Mr Peterson did not or could not comply with that condition or requirement;

(c) the requirement to comply had the effect of impairing the recognition, enjoyment or exercise, on an equal footing, by Aboriginal persons of:

(i) the right to just and favourable conditions of work, including to safe and healthy working conditions;

(ii) the right to private life (including to personal integrity, privacy, autonomy, reputation, family).

207. The family control and interference conduct, or alternatively requiring Mr Peterson to comply with the family control requirement, had the effect of nullifying or impairing Mr Peterson's recognition, enjoyment or exercise, on an equal footing, of the following human rights in the economic and/or cultural fields of public life:

(a) the right to just and favourable conditions of work, including to safe and healthy working conditions;

(b) the right to private life (including to personal integrity, privacy, autonomy, reputation, family).

208. In the premises:

(a)

(i) the family control and interference conduct;

(ii) alternatively, requiring Mr Peterson to comply with the family control requirement,

would be unlawful by reason of s 9(1) of the RD Act if it were done by Hawthorn;

(b) by reason of s 18A of the RD Act, the RD Act applies to Hawthorn as if Hawthorn had also engaged in the family control and interference conduct;

(c) Hawthorn has engaged in unlawful conduct within the meaning of s 9(1) of the RD Act.

209. Alternatively:

(a) in undertaking the family control and interference conduct, the people who were so undertaking were acting or purporting to act on behalf of Mr Peterson's employer, Hawthorn;

(b) non-Indigenous Hawthorn players otherwise in the same or similar circumstances would not have been subjected to the same or a similar level of control or interference in relation to their family lives;

(c) in these premises, the family control and interference conduct constituted a failure, by reason of race, to afford to Mr Peterson the same conditions of work as were made available for:

(i) non-Indigenous Hawthorn players otherwise in the same or similar circumstances;

(ii) accordingly, other persons having the same qualifications and employed in the same circumstances on work of the same description as Mr Peterson.

210. In the premises:

(a) the family control and interference conduct would be unlawful by reason of s 15(1)(b) of the RD Act if it were done by Hawthorn;

(b) by virtue of s 18A the RD Act applies to Hawthorn as if Hawthorn had also engaged in the family control and interference conduct;

(c) Hawthorn has engaged in unlawful conduct within the meaning of s 15(1)(b) of the RD Act.

C.1.4 Stereotyping or domineering conduct—Hawthorn vicarious liability

211. Further or alternatively, the act pleaded in [67(b)]:

(a) constituted Mr Clarkson treating Mr Peterson in a way that involved making an assumption, or manifesting a stereotype, concerning Mr Peterson on the basis of Mr Peterson's Aboriginality (**stereotyping conduct**);

(b) involved a distinction, restriction, or preference based on race (*viz*, Mr Peterson's Aboriginality), in that no comment would have been made about a non-Indigenous person living in a shack in the desert;

(c) had the effect of nullifying or impairing Mr Peterson's recognition, enjoyment or exercise, on an equal footing, of a human right in the economic and/or cultural fields of public life, being:

(i) the right to just and favourable conditions of work, including to safe and healthy working conditions;

(ii) the right to private life (including to personal integrity, privacy, autonomy, reputation, family);

(d) would be unlawful by reason of s 9(1) of the RD Act if it were done by Hawthorn;

(e) by reason of s 18A of the RD Act, is treated for the purposes of the RD Act as though Hawthorn had also engaged in it;

(f) is unlawful conduct of Hawthorn within the meaning of s 9(1) of the RD Act;

(g) further or alternatively, was done acting or purporting to act on behalf of Mr Peterson's employer, Hawthorn;

(h) constituted a failure, by reason of race, to afford to Mr Peterson the same conditions of work as were made available for:

(i) non-Indigenous Hawthorn players otherwise in the same or similar circumstances;

(ii) accordingly, other persons having the same qualifications and employed in the same circumstances on work of the same description as Mr Peterson,

(i) would be unlawful by reason of s 15(1)(b) of the RD Act if it were done by Hawthorn;

(j) by reason of s 18A of the RD Act, is treated for the purposes of the RD Act as though Hawthorn had also engaged in it;

(k) is unlawful conduct of Hawthorn within the meaning of s 15(1)(b) of the RD Act.

212. Further or alternatively, the act pleaded in [70(c)]:

(a) constituted Mr Clarkson treating Mr Peterson, and his family, in a domineering and inappropriate manner (**domineering conduct**);

(b) involved a distinction, restriction, or preference based on race (*viz*, Mr Peterson's Aboriginality), in that the child of a non-Aboriginal person would not be pinned to the wall by a Hawthorn employee in the presence of that non-Aboriginal person;

(c) had the effect of nullifying or impairing Mr Peterson's recognition, enjoyment or exercise, on an equal footing, of a human right in the economic and/or cultural fields of public life, being the right to private life (including to personal integrity, privacy, autonomy, reputation, family);

(d) would be unlawful by reason of s 9(1) of the RD Act if it were done by Hawthorn;

(e) by reason of s 18A of the RD Act, is treated for the purposes of the RD Act as though Hawthorn had also engaged in it;

(f) is unlawful conduct of Hawthorn within the meaning of s 9(1) of the RD Act.

C.2 Mr Cyril Rioli

C.2.1 Personal control conduct—Hawthorn vicarious liability

213. The acts pleaded in [77], [81], [82], [83], [93], [99], [100], [101], [102] and/or [103]:

(a) were acts done by employees or agents of Hawthorn in connection with their duties as employees or agents;

(b) constituted the persons undertaking those acts exercising control over Mr Rioli's personal life (**personal control conduct**).

214. The personal control conduct involved a distinction, restriction, or preference based on race (*viz*, Mr Rioli's Aboriginality).

215. The personal control conduct had the effect of nullifying or impairing Mr Rioli's recognition, enjoyment or exercise, on an equal footing, of the following human rights in the economic and/or cultural fields of public life:

(a) the right to just and favourable conditions of work, including to safe and healthy working conditions;

(b) the right to private life (including to personal integrity, privacy, autonomy, reputation, family).

216. In the premises:

(a) the personal control conduct would be unlawful by reason of s 9(1) of the RD Act if it were done by Hawthorn;

(b) by reason of s 18A of the RD Act, the RD Act applies to Hawthorn as if Hawthorn had also engaged in the personal control conduct;

(c) Hawthorn has engaged in unlawful conduct within the meaning of s 9(1) of the RD Act.

217. Alternatively:

(a) in undertaking the personal control conduct, the people who were so undertaking were acting or purporting to act on behalf of Mr Rioli's employer, Hawthorn;

(b) non-Indigenous Hawthorn players otherwise in the same or similar circumstances would not have been subjected to the same or a similar level of close control over their personal lives;

(c) in these premises, the personal control conduct constituted a failure, by reason of race, to afford to Mr Rioli's the same conditions of work as were made available for:

(i) non-Indigenous Hawthorn players otherwise in the same or similar circumstances;

(ii) accordingly, other persons having the same qualifications and employed in the same circumstances on work of the same description as Mr Rioli's,

218. In the premises:

(a) the personal control conduct would be unlawful by reason of s 15(1)(b) of the RD Act if it were done by Hawthorn;

(b) by reason of s 18A of the RD Act, the RD Act applies to Hawthorn as if Hawthorn had also engaged in the personal control conduct;

(c) Hawthorn has engaged in unlawful conduct within the meaning of s 15(1)(b) of the RD Act.

C.2.2 Personally harmful conduct—Hawthorn vicarious liability

219. Further or alternatively, the acts pleaded in [73], [74], [77], [81], [82], [83], [88], [89], [93], [94], [95], [97], [99], [100], [101], [102], [103] and/or [105]:

(a) were acts done by employees or agents of Hawthorn in connection with their duties as employees or agents;

(b) constituted the persons undertaking those acts doing acts harmful to Mr Rioli's psychological integrity, privacy, and autonomy (**personally harmful conduct**).

220. The personally harmful conduct involved a distinction, restriction, or preference based on race (*viz*, the Aboriginality of Mr Rioli, Ms Ah Sam-Rioli, or both).

221. The personally harmful conduct had the effect of nullifying or impairing Mr Rioli's recognition, enjoyment or exercise, on an equal footing, of the following human rights in the economic and/or cultural fields of public life:

(a) the right to just and favourable conditions of work, including to safe and healthy working conditions;

(b) the right to private life (including to personal integrity, privacy, autonomy, reputation, family).

222. In the premises:

(a) the personally harmful conduct would be unlawful by reason of s 9(1) of the RD Act if it were done by Hawthorn;

(b) by reason of s 18A of the RD Act, the RD Act applies to Hawthorn as if Hawthorn had also engaged in the personally harmful conduct;

(c) Hawthorn has engaged in unlawful conduct within the meaning of s 9(1) of the RD Act.

223. Alternatively:

(a) in undertaking the personally harmful conduct, the people who were so undertaking were acting or purporting to act on behalf of Mr Rioli's employer, Hawthorn;

(b) non-Indigenous Hawthorn players otherwise in the same or similar circumstances would not have been subjected to the same or a similar level of personally harmful conduct;

(c) in these premises, the personally harmful conduct constituted a failure, by reason of race, to afford to Mr Rioli the same conditions of work as were made available for:

(i) non-Indigenous Hawthorn players otherwise in the same or similar circumstances;

(ii) accordingly, other persons having the same qualifications and employed in the same circumstances on work of the same description as Mr Peterson.

224. In the premises:

(a) the personally harmful conduct would be unlawful by reason of s 15(1)(b) of the RD Act if it were done by Hawthorn;

(b) by reason of s 18A of the RD Act, the RD Act applies to Hawthorn as if Hawthorn had also engaged in the personally harmful conduct;

(c) Hawthorn has engaged in unlawful conduct within the meaning of s 15(1)(b) of the RD Act.

C.2.3 Family control and interference conduct—Hawthorn vicarious liability

225. Further or alternatively, the acts pleaded in [77], [81], [82], [83], [89], [93], [99], [100], [101], [102] and/or [103] constituted the persons undertaking those acts exercising control over, and interfering in, Mr Rioli's family life (**family control and interference conduct**).

226. The family control and interference conduct involved a distinction, restriction, or preference based on race (*viz*, the Aboriginality of Mr Rioli and his family).

227. The family control and interference conduct had the effect of nullifying or impairing Mr Rioli's recognition, enjoyment or exercise, on an equal footing, of the following human rights in the economic and/or cultural fields of public life:

(a) the right to just and favourable conditions of work, including to safe and healthy working conditions;

(b) the right to private life (including to personal integrity, privacy, autonomy, reputation, family).

228. Alternatively to [226]:

(a) the acts pleaded in [77], [81], [82], [83], [89], [93], [99], [100], [101], [102] and/or [103] constituted the persons undertaking those acts requiring Mr Rioli to comply with a condition or requirement concerning his family life (**family control requirement**) that was not reasonable having regard to the circumstances;

(b) Mr Rioli did not or could not comply with that condition or requirement;

(c) the requirement to comply had the effect of impairing the recognition, enjoyment or exercise, on an equal footing, by Aboriginal persons of:

(i) the right to just and favourable conditions of work, including to safe and healthy working conditions;

(ii) the right to private life (including to personal integrity, privacy, autonomy, reputation, family).

229. The family control and interference conduct, or alternatively requiring Mr Rioli to comply with the family control requirement, had the effect of nullifying or impairing Mr Rioli's recognition, enjoyment or exercise, on an equal footing, of the following human rights in the economic and/or cultural fields of public life:

(a) the right to just and favourable conditions of work, including to safe and healthy working conditions;

(b) the right to private life (including to personal integrity, privacy, autonomy, reputation, family).

230. In the premises:

(a)

(i) the family control and interference conduct;

(ii) alternatively, requiring Mr Rioli to comply with the family control requirement,

would be unlawful by reason of s 9(1) of the RD Act if it were done by Hawthorn;

(b) by reason of s 18A of the RD Act, the RD Act applies to Hawthorn as if Hawthorn had also engaged in the family control and interference conduct;

(c) Hawthorn has engaged in unlawful conduct within the meaning of s 9(1) of the RD Act.

231. Alternatively:

(a) in undertaking the family control and interference conduct, the people who were so undertaking were acting or purporting to act on behalf of Mr Rioli's employer, Hawthorn;

(b) non-Indigenous Hawthorn players otherwise in the same or similar circumstances would not have been subjected to the same or a similar level of control or interference in relation to their family lives;

(c) in these premises, the family control and interference conduct constituted a failure, by reason of race, to afford to Mr Rioli's the same conditions of work as were made available for:

(i) non-Indigenous Hawthorn players otherwise in the same or similar circumstances;

(ii) accordingly, other persons having the same qualifications and employed in the same circumstances on work of the same description as Mr Rioli.

232. In the premises:

(a) the family control and interference conduct would be unlawful by reason of s 15(1)(b) of the RD Act if it were done by Hawthorn;

(b) by virtue of s 18A the RD Act applies to Hawthorn as if Hawthorn had also engaged in the family control and interference conduct;

(c) Hawthorn has engaged in unlawful conduct within the meaning of s 15(1)(b) of the RD Act.

C.2.4 Culturally harmful conduct—Hawthorn vicarious liability

233. Further or alternatively, the acts pleaded in [73], [74], [85], [86], [88], [89], [94], [100], [101], [102], and/or [103] constituted cultural ignorance, insensitivity, or bigotry, with respect to Mr Rioli's culture, from the relevant persons (**culturally harmful conduct**).

234. The culturally harmful conduct involved a distinction, restriction, or preference based on race (*viz*, the Aboriginality of Mr Rioli, Ms Ah Sam-Rioli, or both).

235. The culturally harmful conduct had the effect of nullifying or impairing Mr Rioli's recognition, enjoyment or exercise, on an equal footing, of the following human rights, in the economic and/or cultural fields of public life:

(a) to just and favourable conditions of work, including to safe and healthy working conditions.

(b) to private life (including to personal integrity, privacy, autonomy, reputation, family).

236. In the premises:

(a) the culturally harmful conduct would be unlawful by reason of s 9(1) of the RD Act if it were done by Hawthorn;

(b) by reason of s 18A of the RD Act, the RD Act applies to Hawthorn as if Hawthorn had also engaged in the culturally harmful conduct;

(c) Hawthorn has engaged in unlawful conduct within the meaning of s 9(1) of the RD Act.

237. Alternatively:

(a) in undertaking the culturally harmful conduct, the people who were so undertaking were acting or purporting to act on behalf of Mr Rioli's employer, Hawthorn;

(b) non-Indigenous Hawthorn players otherwise in the same or similar circumstances would not have been subjected to the same or a similar level of cultural ignorance, insensitivity, or bigotry in relation to their cultures;

(c) in these premises, the culturally harmful conduct constituted a failure, by reason of race, to afford to Mr Rioli's the same conditions of work as were made available for:

(i) non-Indigenous Hawthorn players otherwise in the same or similar circumstances;

(ii) accordingly, other persons having the same qualifications and employed in the same circumstances on work of the same description as Mr Rioli.

238. In the premises:

(a) the culturally harmful conduct would be unlawful by reason of s 15(1)(b) of the RD Act if it were done by Hawthorn;

(b) by virtue of s 18A the RD Act applies to Hawthorn as if Hawthorn had also engaged in the culturally harmful conduct;

(c) Hawthorn has engaged in unlawful conduct within the meaning of s 15(1)(b) of the RD Act.

C.2.5 Stereotyping conduct—Hawthorn vicarious liability

239. Further or alternatively, the acts pleaded in [90], [94], [96] and/or [100]:

(a) constituted treating Mr Rioli and his family (Ms Ah Sam-Rioli; his nephew) in a way that involved making an assumption, or manifesting a stereotype, concerning Mr Rioli and his family on the basis of their Aboriginality (**stereotyping conduct**);

(b) involved a distinction, restriction, or preference based on race (*viz*, Aboriginality);

(c) had the effect of nullifying or impairing Mr Rioli's recognition, enjoyment or exercise, on an equal footing, of a human right in the economic and/or cultural fields of public life, being:

(i) the right to just and favourable conditions of work, including to safe and healthy working conditions;

(ii) the right to private life (including to personal integrity, privacy, autonomy, reputation, family).

(d) would be unlawful by reason of s 9(1) of the RD Act if it were done by Hawthorn;

(e) by reason of s 18A of the RD Act, is treated for the purposes of the RD Act as though Hawthorn had also engaged in it;

(f) is unlawful conduct of Hawthorn within the meaning of s 9(1) of the RD Act;

(g) further or alternatively, was done acting or purporting to act on behalf of Mr Rioli's employer, Hawthorn;

(h) constituted a failure, by reason of race, to afford to Mr Rioli the same conditions of work as were made available for:

(i) non-Indigenous Hawthorn players otherwise in the same or similar circumstances;

(ii) accordingly, other persons having the same qualifications and employed in the same circumstances on work of the same description as Mr Rioli,

(i) would be unlawful by reason of s 15(1)(b) of the RD Act if it were done by Hawthorn;

(j) by reason of s 18A of the RD Act, is treated for the purposes of the RD Act as though Hawthorn had also engaged in it;

(k) is unlawful conduct of Hawthorn within the meaning of s 15(1)(b) of the RD Act.

240. For the avoidance of doubt, for the purposes of relief, Ms Ah Sam-Rioli was adversely affected by the matters pleaded in this Part C.2.

C.3 Shannon Ah Sam-Rioli

C.3.1 Personally harmful conduct—Hawthorn vicarious liability

241. The acts pleaded in [81], [82], [83], [84], [85], [86], [87], [89], [90], [91], [93], [94], [99], [100], [101], [102] and/or [103]:

(a) were acts done by employees or agents of Hawthorn in connection with their duties as employees or agents;

(b) constituted the persons undertaking those acts doing acts harmful to Ms Ah Sam-Rioli's psychological integrity, privacy, and autonomy (**personally harmful conduct**).

242. The personally harmful conduct involved a distinction, restriction, or preference based on race (*viz*, the Aboriginality of Ms Ah Sam-Rioli, Mr Rioli, or both).

243. The personally harmful conduct had the effect of nullifying or impairing Ms Ah Sam-Rioli's recognition, enjoyment or exercise, on an equal footing, of the right to private life (including to personal integrity, privacy, autonomy, reputation, family).

244. In the premises:

(a) the personally harmful conduct would be unlawful by reason of s 9(1) of the RD Act if it were done by Hawthorn;

(b) by reason of s 18A of the RD Act, the RD Act applies to Hawthorn as if Hawthorn had also engaged in the personally harmful conduct;

(c) Hawthorn has engaged in unlawful conduct within the meaning of s 9(1) of the RD Act.

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

245. Further or alternatively, the acts pleaded in [77], [81], [82], [83], [89], [93], [99], [100], [101], [102] and/or [103] constituted the persons undertaking those acts exercising control over, and interfering in, Ms Ah Sam-Rioli's family life (**family control and interference conduct**).

246. The family control and interference conduct involved a distinction, restriction, or preference based on race (*viz*, the Aboriginality of Ms Ah Sam-Rioli and her family).

247. The family control and interference conduct had the effect of nullifying or impairing Ms Ah Sam-Rioli's recognition, enjoyment or exercise, on an equal footing, of the right to private life (including to personal integrity, privacy, autonomy, reputation, family).

248. Alternatively to [246]:

(a) the acts pleaded in [77], [81], [82], [83], [89], [93], [99], [100], [101], [102] and/or [103] constituted the persons undertaking those acts requiring Ms Ah Sam-Rioli to comply with a condition or requirement concerning her family life (**family control requirement**) that was not reasonable having regard to the circumstances;

(b) Ms Ah Sam-Rioli did not or could not comply with that condition or requirement;

(c) the requirement to comply had the effect of impairing the recognition, enjoyment or exercise, on an equal footing, by Aboriginal persons of the right to private life (including to personal integrity, privacy, autonomy, reputation, family).

249. The family control and interference conduct, or alternatively requiring Ms Ah Sam-Rioli to comply with the family control requirement, had the effect of nullifying or impairing Mr Peterson's recognition, enjoyment or exercise, on an equal footing, of the right to private life (including to personal integrity, privacy, autonomy, reputation, family).

250. In the premises:

(a)

(i) the family control and interference conduct;

(ii) alternatively, requiring Ms Ah Sam-Rioli to comply with the family control requirement,

would be unlawful by reason of s 9(1) of the RD Act if it were done by Hawthorn;

(b) by reason of s 18A of the RD Act, the RD Act applies to Hawthorn as if Hawthorn had also engaged in the family control and interference conduct;

(c) Hawthorn has engaged in unlawful conduct within the meaning of s 9(1) of the RD Act.

C.3.3 Culturally harmful conduct—Hawthorn vicarious liability

251. Further or alternatively, the acts pleaded in [81], [82], [83], [84], [85], [86], [87], [89], [90], [91], [96], [99], [100], [101], [102], and/or [103] constituted cultural ignorance, insensitivity, or bigotry, with respect to Ms Ah Sam-Rioli's culture, from the relevant persons (**culturally harmful conduct**).

252. The culturally harmful conduct involved a distinction, restriction, or preference based on race (*viz*, the Aboriginality of Ms Ah Sam-Rioli, Mr Rioli, or both).

253. The culturally harmful conduct had the effect of nullifying or impairing Ms Ah Sam-Rioli's recognition, enjoyment or exercise, on an equal footing, of the following human rights, in the economic and/or cultural fields of public life:

(a) to just and favourable conditions of work, including to safe and healthy working conditions.

(b) to private life (including to personal integrity, privacy, autonomy, reputation, family).

254. In the premises:

(a) the culturally harmful conduct would be unlawful by reason of s 9(1) of the RD Act if it were done by Hawthorn;

(b) by reason of s 18A of the RD Act, the RD Act applies to Hawthorn as if Hawthorn had also engaged in the culturally harmful conduct;

(c) Hawthorn has engaged in unlawful conduct within the meaning of s 9(1) of the RD Act.

C.3.4 Stereotyping conduct—Hawthorn vicarious liability

255. Further or alternatively, the acts pleaded in [90], [96, and/or [100]:

(a) constituted treating Ms Ah Sam-Rioli and her family (Mr Rioli's nephew) in a way that involved making an assumption, or manifesting a stereotype, concerning Ms Ah Sam-Rioli and her family on the basis of their Aboriginality (**stereotyping conduct**);

(b) involved a distinction, restriction, or preference based on race (*viz*, Aboriginality);

(c) had the effect of nullifying or impairing Ms Ah Sam-Rioli's recognition, enjoyment or exercise, on an equal footing, of a human right in the economic and/or cultural fields of public life, being the right to private life (including to personal integrity, privacy, autonomy, reputation, family);

(d) would be unlawful by reason of s 9(1) of the RD Act if it were done by Hawthorn;

(e) by reason of s 18A of the RD Act, is treated for the purposes of the RD Act as though Hawthorn had also engaged in it;

(f) is unlawful conduct of Hawthorn within the meaning of s 9(1) of the RD Act.

256. For the avoidance of doubt, for the purposes of relief, Mr Rioli was adversely affected by the matters pleaded above in this Part C.3.

C.4 Jermaine Miller-Lewis

C.4.1 Personal control conduct—Hawthorn vicarious liability

257. The acts pleaded in [110], [111], [117], [123], [126], [128], [129], [130], [131], [132], [133], [134], [138], [142], [143], [146], [148], [153], and/or [155]:

(a) were acts done by employees or agents of Hawthorn in connection with their duties as employees or agents;

(b) constituted the persons undertaking those acts exercising control over Mr Miller-Lewis's personal life (**personal control conduct**).

258. The personal control conduct involved a distinction, restriction, or preference based on race (*viz*, Mr Miller-Lewis's Aboriginality).

259. The personal control conduct had the effect of nullifying or impairing Mr Miller-Lewis's recognition, enjoyment or exercise, on an equal footing, of the following human rights in the economic and/or cultural fields of public life:

(a) the right to just and favourable conditions of work, including to safe and healthy working conditions;

(b) the right to private life (including to personal integrity, privacy, autonomy, reputation, family).

260. In the premises:

(a) the personal control conduct would be unlawful by reason of s 9(1) of the RD Act if it were done by Hawthorn;

(b) by reason of s 18A of the RD Act, the RD Act applies to Hawthorn as if Hawthorn had also engaged in the personal control conduct;

(c) Hawthorn has engaged in unlawful conduct within the meaning of s 9(1) of the RD Act.

261. Alternatively:

(a) in undertaking the personal control conduct, the people who were so undertaking were acting or purporting to act on behalf of Mr Miller-Lewis's employer, Hawthorn;

(b) non-Indigenous Hawthorn players otherwise in the same or similar circumstances would not have been subjected to the same or a similar level of close control over their personal lives;

(c) in these premises, the personal control conduct constituted a failure, by reason of race, to afford to Mr Miller-Lewis's the same conditions of work as were made available for:

(i) non-Indigenous Hawthorn players otherwise in the same or similar circumstances;

(ii) accordingly, other persons having the same qualifications and employed in the same circumstances on work of the same description as Mr Miller-Lewis's.

262. In the premises:

(a) the personal control conduct would be unlawful by reason of s 15(1)(b) of the RD Act if it were done by Hawthorn;

(b) by reason of s 18A of the RD Act, the RD Act applies to Hawthorn as if Hawthorn had also engaged in the personal control conduct;

(c) Hawthorn has engaged in unlawful conduct within the meaning of s 15(1)(b) of the RD Act.

C.4.2 Personally harmful conduct—Hawthorn vicarious liability

263. Further or alternatively, the acts pleaded in [110], [111], [117], [123], [126], [128], [129], [130], [131], [132], [133], [134], [138], [142], [143], [146], [148], [153], [155], [155(a)], [157], [159] and/or [161]:

(a) were acts done by employees or agents of Hawthorn in connection with their duties as employees or agents;

(b) constituted the persons undertaking those acts doing acts harmful to Mr Miller-Lewis's psychological integrity, privacy, and autonomy (**personally harmful conduct**).

264. The personally harmful conduct involved a distinction, restriction, or preference based on race (*viz*, Mr Miller-Lewis's Aboriginality).

265. The personally harmful conduct had the effect of nullifying or impairing Mr Miller-Lewis's recognition, enjoyment or exercise, on an equal footing, of the following human rights in the economic and/or cultural fields of public life:

(a) the right to just and favourable conditions of work, including to safe and healthy working conditions;

(b) the right to private life (including to personal integrity, privacy, autonomy, reputation, family).

266. In the premises:

(a) the personally harmful conduct would be unlawful by reason of s 9(1) of the RD Act if it were done by Hawthorn;

(b) by reason of s 18A of the RD Act, the RD Act applies to Hawthorn as if Hawthorn had also engaged in the personally harmful conduct;

(c) Hawthorn has engaged in unlawful conduct within the meaning of s 9(1) of the RD Act.

267. Alternatively:

(a) in undertaking the personally harmful conduct, the people who were so undertaking were acting or purporting to act on behalf of Miller-Lewis's employer, Hawthorn;

(b) non-Indigenous Hawthorn players otherwise in the same or similar circumstances would not have been subjected to the same or a similar level of personally harmful conduct;

(c) in these premises, the personally harmful conduct constituted a failure, by reason of race, to afford to Miller-Lewis the same conditions of work as were made available for:

(i) non-Indigenous Hawthorn players otherwise in the same or similar circumstances;

(ii) accordingly, other persons having the same qualifications and employed in the same circumstances on work of the same description as Mr Peterson.

268. In the premises:

(a) the personally harmful conduct would be unlawful by reason of s 15(1)(b) of the RD Act if it were done by Hawthorn;

(b) by reason of s 18A of the RD Act, the RD Act applies to Hawthorn as if Hawthorn had also engaged in the personally harmful conduct;

(c) Hawthorn has engaged in unlawful conduct within the meaning of s 15(1)(b) of the RD Act.

C.4.3 Family control and interference conduct—Hawthorn vicarious liability

269. Further or alternatively, the acts pleaded in [110], [111], [117], [123], [126], [128], [129], [130], [131], [132], [134], [138], [142], [143], [146], [148] and/or [155] constituted the persons undertaking those acts exercising control over, and interfering in, Mr Miller-Lewis's family life (**family control and interference conduct**).

270. The family control and interference conduct involved a distinction, restriction, or preference based on race (*viz*, Mr Miller-Lewis's Aboriginality).

271. Alternatively to [270]:

(a) the acts pleaded in [110], [111], [117], [123], [126], [128], [129], [130], [131], [132], [134], [138], [142], [143], [146], [148] and/or [155] constituted the persons undertaking those acts requiring Mr Miller-Lewis to comply with a condition or requirement concerning his family life (**family control requirement**) that was not reasonable having regard to the circumstances;

(b) Mr Miller-Lewis did not or could not comply with that condition or requirement;

(c) the requirement to comply had the effect of impairing the recognition, enjoyment or exercise, on an equal footing, by Aboriginal persons of:

(i) the right to just and favourable conditions of work, including to safe and healthy working conditions;

(ii) the right to private life (including to personal integrity, privacy, autonomy, reputation, family).

272. The family control and interference conduct, or alternatively requiring Miller-Lewis to comply with the family control requirement, had the effect of nullifying or impairing Mr Miller-Lewis's recognition, enjoyment or exercise, on an equal footing, of the following human rights in the economic and/or cultural fields of public life:

(a) the right to just and favourable conditions of work, including to safe and healthy working conditions;

(b) the right to private life (including to personal integrity, privacy, autonomy, reputation, family).

273. In the premises:

(a)

(i) the family control and interference conduct;

(ii) alternatively, requiring Miller-Lewis to comply with the family control requirement,

would be unlawful by reason of s 9(1) of the RD Act if it were done by Hawthorn;

(b) by reason of s 18A of the RD Act, the RD Act applies to Hawthorn as if Hawthorn had also engaged in the family control and interference conduct;

(c) Hawthorn has engaged in unlawful conduct within the meaning of s 9(1) of the RD Act.

274. Alternatively:

(a) in undertaking the family control and interference conduct, the people who were so undertaking were acting or purporting to act on behalf of Mr Miller-Lewis's employer, Hawthorn;

(b) non-Indigenous Hawthorn players otherwise in the same or similar circumstances would not have been subjected to the same or a similar level of control or interference in relation to their family lives;

(c) in these premises, the family control and interference conduct constituted a failure, by reason of race, to afford to Mr Miller-Lewis's the same conditions of work as were made available for:

(i) non-Indigenous Hawthorn players otherwise in the same or similar circumstances;

(ii) accordingly, other persons having the same qualifications and employed in the same circumstances on work of the same description as Mr Peterson.

275. In the premises:

(a) the family control and interference conduct would be unlawful by reason of s 15(1)(b) of the RD Act if it were done by Hawthorn;

(b) by virtue of s 18A the RD Act applies to Hawthorn as if Hawthorn had also engaged in the family control and interference conduct;

(c) Hawthorn has engaged in unlawful conduct within the meaning of s 15(1)(b) of the RD Act.

C.5 Ms Montanah-Rae Lewis

276. For the avoidance of doubt, for the purposes of relief, Ms Lewis was adversely affected by the matters pleaded in Part C.5.

C.6 Leon Egan

C.6.1 Marginalising conduct—Hawthorn vicarious liability

277. The acts pleaded in [170], [173], [177], [178] and/or [179] constituted marginalising Mr Egan despite the duties of his role in his employment with Hawthorn, from the relevant persons (**marginalising conduct**).

278. The marginalising conduct involved a distinction, restriction, or preference based on race (*viz*, Mr Egan's Aboriginality).

279. The marginalising conduct had the effect of nullifying or impairing Mr Egan's recognition, enjoyment or exercise, on an equal footing, of the human right, in the economic and/or cultural fields of public life, to just and favourable conditions of work, including to safe and healthy working conditions.

280. In the premises:

(a) the marginalising conduct would be unlawful by reason of s 9(1) of the RD Act if it were done by Hawthorn;

(b) by reason of s 18A of the RD Act, the RD Act applies to Hawthorn as if Hawthorn had also engaged in the marginalising conduct;

(c) Hawthorn has engaged in unlawful conduct within the meaning of s 9(1) of the RD Act.

281. Alternatively:

(a) in undertaking the marginalising conduct, the people who were so undertaking were acting or purporting to act on behalf of Mr Egan's employer, Hawthorn;

(b) a non-Indigenous cultural liaison officer otherwise in the same or similar circumstances would not have been so marginalised in regard to issues affecting that person's duties in connection with that person's culture;

(c) in these premises, the marginalising conduct constituted a failure, by reason of race, to afford to Mr Egan's the same conditions of work as were made available for:

(i) a non-Indigenous officer with an equivalent position, otherwise in the same or similar circumstances;

(ii) accordingly, other persons having the same qualifications and employed in the same circumstances on work of the same description as Mr Egan.

282. In the premises:

(a) the marginalising conduct would be unlawful by reason of s 15(1)(b) of the RD Act if it were done by Hawthorn;

(b) by virtue of s 18A the RD Act applies to Hawthorn as if Hawthorn had also engaged in the marginalising conduct;

(c) Hawthorn has engaged in unlawful conduct within the meaning of s 15(1)(b) of the RD Act.

C.6.2 Culturally harmful conduct—Hawthorn vicarious liability

283. The acts pleaded in [170], [173], [177], [178] and/or [179] constituted cultural ignorance or insensitivity directed against Mr Egan's culture, from the relevant persons (**culturally harmful conduct**).

284. The culturally ignorant conduct involved a distinction, restriction, or preference based on race (*viz*, Mr Egan's Aboriginality).

285. The culturally ignorant conduct had the effect of nullifying or impairing Mr Egan's recognition, enjoyment or exercise, on an equal footing, of the human right, in the economic and/or cultural fields of public life, to just and favourable conditions of work, including to safe and healthy working conditions.

286. In the premises:

(a) the culturally harmful conduct would be unlawful by reason of s 9(1) of the RD Act if it were done by Hawthorn;

(b) by reason of s 18A of the RD Act, the RD Act applies to Hawthorn as if Hawthorn had also engaged in the culturally harmful conduct;

(c) Hawthorn has engaged in unlawful conduct within the meaning of s 9(1) of the RD Act.

287. Alternatively:

(a) in undertaking the culturally harmful conduct, the people who were so undertaking were acting or purporting to act on behalf of Mr Egan's employer, Hawthorn;

(b) non-Indigenous Hawthorn employees otherwise in the same or similar circumstances would not have been subjected to the same or a similar level of cultural ignorance or insensitivity in relation to their cultures;

(c) in these premises, the culturally harmful conduct constituted a failure, by reason of race, to afford to Mr Egan's the same conditions of work as were made available for:

(i) non-Indigenous Hawthorn players otherwise in the same or similar circumstances;

(ii) accordingly, other persons having the same qualifications and employed in the same circumstances on work of the same description as Mr Egan.

288. In the premises:

(a) the culturally harmful conduct would be unlawful by reason of s 15(1)(b) of the RD Act if it were done by Hawthorn;

(b) by virtue of s 18A the RD Act applies to Hawthorn as if Hawthorn had also engaged in the culturally harmful conduct;

(c) Hawthorn has engaged in unlawful conduct within the meaning of s 15(1)(b) of the RD Act.

C.7 Hawthorn direct liability

289. At all material times, Hawthorn knew, or ought to have known, or it was reasonably foreseeable that:

(a) there exist in, and are transmitted throughout, Australian society generic ideas and stereotypes about Aboriginal people;

(b) these ideas and stereotypes are learned and transmitted by individuals living and working in Australian society;

(c) these ideas and stereotypes can result in such individuals who come in contact with Aboriginal people engaging in speech or other conduct that involves a distinction, restriction or preference based on race;

(d) these ideas and stereotypes would result in individuals working for Hawthorn, who come in contact with Aboriginal players and their families engaging in speech or other conduct that involves a distinction, restriction or preference based on race;

(e) speech or other conduct of the kind pleaded in sub-paragraph (d) could harm or adversely affect Aboriginal players, including in respect of:

(i) their right to just and favourable conditions of work, including to safe and healthy working conditions;

(ii) their right to private life (including to personal integrity, privacy, autonomy, reputation, family).

290. Hawthorn failed:

(a) to protect Messrs Peterson, Rioli and Miller-Lewis against the harm or adverse effects of racially discriminatory speech or other conduct, including speech or other conduct of the kind pleaded in [289(d)];

(b) failed take adequate steps to prevent, and/or to adequately respond to, harm or adverse effects of such speech or other conduct

(**inadequate systems conduct**).

Particulars

Racially discriminatory speech or other conduct includes:

(i) personal control conduct.

(ii) personally harmful conduct.

(iii) family control and interference conduct.

(iv) family control requirements.

(v) stereotyping conduct.

(vi) domineering conduct.

(vi) marginalising conduct.

(vii) culturally ignorant conduct.

The inadequate systems conduct includes, without limitation:

(i) failing to provide any, alternatively adequate, education, training or experience (**anti-racism training**) to employees or agents of Hawthorn;

(ii) failing to respond, adequately or at all, to incidents of racially discriminatory speech or other conduct;

(iii) failing to provide a culturally safe working environment.

291. The inadequate systems conduct involved a distinction, restriction, or preference based on race (*viz*, Aboriginality).

292. Alternatively to [291]:

(a) the effect of the inadequate systems conduct was to require Messrs Peterson, Rioli and Miller-Lewis, or each of them, to comply with a condition or requirement (**racist culture condition**), being that they or he work in an environment in which he:

(i) was subjected to conduct that was racially discriminatory, and therefore harmful, to Aboriginal players and their families;

(ii) did not have access to measures that would have protected him against, prevented, and/or adequately respond to, such conduct;

(b) the racist culture condition was not reasonable having regard to the circumstances of the case.

(c)

(i) Mr Peterson

(ii) Mr Rioli

(iii) Mr Miller-Lewis

could not comply with the racist culture condition.

(d) The requirement to comply with the racist culture condition had the effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, by Aboriginal persons, of the following human rights in the economic and/or cultural fields of public life:

(i) the right to just and favourable conditions of work, including to safe and healthy working conditions;

(ii) the right to private life (including to personal integrity, privacy, autonomy, reputation, family).

293. The inadequate systems conduct, alternatively the requirement to comply with the racist culture condition, had the effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, by:

(a) Mr Peterson

(b) Mr Rioli

(c) Mr Miller-Lewis

of the following human rights in the economic and/or cultural fields of public life:

(i) the right to just and favourable conditions of work, including to safe and healthy working conditions;

(ii) the right to private life (including to personal integrity, privacy, autonomy, reputation, family).

294. In the premises, the inadequate systems conduct was unlawful conduct within the meaning of s 9(1) of the RD Act.

295. Further or alternatively, non-Indigenous Hawthorn players otherwise in the same or similar circumstances to:

(a) Mr Peterson would not have been subjected to conduct the same as, or similar to:

(i) the personal control conduct;

(ii) the personally harmful conduct;

(iii) the family control and interference conduct, alternatively the family control requirement;

(iv) the stereotyping conduct;

(v) the domineering conduct

pleaded in Part C.1.

(b) Mr Rioli would not have been subjected to conduct the same as, or similar to:

(i) the personal control conduct;

(ii) the personally harmful conduct;

(iii) the family control and interference conduct, alternatively the family control requirement;

(iv) the culturally harmful conduct;

(v) the stereotyping conduct

pleaded in Part C.2.

(c) Mr Miller-Lewis would not have been subjected to conduct the same as, or similar to:

(i) the personal control conduct;

(ii) the personally harmful conduct;

(iii) the family control and interference conduct, alternatively the family control requirement

pleaded in Part C.4.

296. In the premises, Hawthorn failed to afford each of them the same conditions of work as were made available for other persons having the same qualifications and employed in the same circumstances on work of the same description as them.

297. In the premises, Hawthorn engaged in unlawful conduct within the meaning of s 15(1)(b) of the RD Act.

D. NEGLIGENCE

298. At all relevant times, by reason of the matters pleaded in Part A.2 above, Hawthorn was directly or vicariously liable in tort for the conduct and actions of the employees, officers and agents of Hawthorn, namely:

(a) Mr Clarkson;

(b) Mr Fagan;

(c) Mr Burt;

(d) Mr Matthews;

(e) Mr Evans;

(f) Mr Kennett;

(g) Mr Wright -

performed while acting in the courses of their employment or within the scope of their engagement and responsibilities acting as servants and or agents for Hawthorn.

299. At all relevant times, as the employer of the players, Hawthorn owed Messrs Peterson, Rioli and Miller-Lewis a non-delegable duty of care to take reasonable care:

(a) to avoid exposing them to unnecessary risk of injury;

(b) to take reasonable steps to avoid creating or exposing them to reasonably foreseeable risk of psychiatric injury;

(c) to protect the mental integrity of Messrs Peterson, Rioli and Miller-Lewis from the unreasonable infliction of serious harm.

300. At all relevant times it was reasonably foreseeable to an employer in the position of Hawthorn that:

(a) engaging in conduct that threatened, vilified, and/or disparaged players on the basis of their race including conduct in breach of the RD Act (**discriminatory conduct**);

(b) subjecting or exposing players to, or failing to protect players from, discriminatory conduct including exposure to racialised stereotyping and culturally harmful conduct;

(c) subjecting or exposing players to, or failing to protect players from, harm or adverse effects from speech or conduct of the kind pleaded in [289(d)];

(d) engaging in bullying and intimidatory conduct, including of a racist and/or discriminatory nature;

(e) denying the existence and impact on Indigenous players of current and historical racism -

might cause distress, psychological harm and injury to Indigenous players of Hawthorn including Messrs Peterson, Rioli and Miller-Lewis.

301. Further, at all relevant times, it was reasonably foreseeable to an employer in the position of Hawthorn that unreasonable intrusion into, disruption of, directions regarding and exercise of purported control over the family, cultural and non football lives of Indigenous players of Hawthorn including Messrs Peterson, Rioli and Miller-Lewis might cause distress, psychological harm and injury.

302. The scope of the duty of care owed by Hawthorn to Messrs Peterson, Rioli and Miller-Lewis included to take reasonable steps to:

(a) to provide a safe place of work for the players to participate in the AFL competition as a professional football players, including in matches, training and preparation;

(b) not engage in, prohibit, prevent and cease discriminatory and culturally harmful conduct by employees and agents at Hawthorn, directed at Messrs Peterson, Rioli and Miller-Lewis;

(c) not engage in, prohibit, prevent and cease discriminatory and culturally harmful conduct by employees and agents at Hawthorn (whether nor not personally directed at Messrs Peterson, Rioli and Miller-Lewis) to which Messrs Peterson, Rioli and Miller-Lewis were exposed to or aware of;

(d) take reasonable measures in response to the foreseeable risk of harm or adverse effects from speech or conduct of the kind pleaded in [289(d)],

including sufficient anti-racism training, as defined in [290] above, to mitigate that risk;

(e) ensure that, from time to time, Hawthorn provided and ensured participation in cultural awareness and anti-discrimination training for all of its employees and agents;

(f) comply with, enforce, and prevent contravention of, relevant Rules, Policies and Codes as in force from time to time including:

(i) the Peek Rule;

(ii) the Players Code of Conduct and in particular the non-vilification provision

(iii) from around 2006 to February 2013, the ADH policy;

(iv) from around 2013, the Discrimination Policy;

(v) from around August 2017, the R & R policy;

(vi) the Vilification Framework.

(g) avoid unreasonable intrusion and exercise of control and influence over the family, cultural and non-football lives of Messrs Peterson, Rioli and Miller-Lewis including by way of direction by or purportedly on behalf of Hawthorn by its servants and agents to the players or their partners;

(h) avoid taking steps that foreseeably created or gave rise to an unreasonable risk of disruption in the family and cultural lives of Messrs Peterson, Rioli, and Miller-Lewis;

(i) where taking active steps to become involved in the personal lives and decisions of Messrs Peterson, Rioli and Miller-Lewis on or purportedly on behalf of Hawthorn, considering the welfare of Messrs Peterson, Rioli and Miller-Lewis, and ensuring that the welfare of Messrs Peterson, Rioli and Miller-Lewis was not adversely affected by the intervention;

(j) ensure adequate Indigenous advocacy, voice or representation at Hawthorn to support indigenous players, including by adequately funding, supporting and heeding Indigenous liaison officers at the relevant times;

(k) recognise and acknowledge the fact of historical racism at Hawthorn and the AFL;

(l) take steps to reduce the ongoing impacts of that historical racism.

(the **reasonable standard of care**)

303. By reason of the conduct set out at Part B.3 above, Hawthorn, including by way of its servants and agents was negligent and breached the duty of care owed to Mr Peterson.

Particulars of negligence

(a) Failing to comply with the reasonable standard of care from time to time;

(b) Engaging in and failing to prevent discrimination and harmful conduct, specifically:

i. The personal control conduct;

ii. The personally harmful conduct;

iii. The family control and interference conduct, or alternatively the family control requirement;

iv. The stereotyping conduct;

v. The domineering conduct;

(c) Engaging in the inadequate systems conduct;

(d) Imposing the racist culture condition

(e) Failing to take reasonable steps to ensure and provide a culturally safe workplace.

304. By reason of the conduct set out at Part B.4 above, Hawthorn, including by way of its servants and agents was negligent and breached the duty of care owed to Mr Rioli.

Particulars of negligence

(a) Failing to comply with the reasonable standard of care from time to time;

(b) Engaging in and failing to prevent discrimination and harmful conduct, specifically:

i. The personal control conduct;

ii. The personally harmful conduct;

iii. The family control and interference conduct, or alternatively the family control requirement;

iv. The stereotyping conduct;

(c) Engaging in the inadequate systems conduct;

(d) Imposing the racist culture condition;

(e) Failing to take reasonable steps to ensure and provide a culturally safe workplace

(f) Failing to heed and respond to complaints by Mr Rioli and Ms Ah Sam-Rioli;

(g) Failing to conduct any or adequate Cultural Awareness Training, and in particular failing to consider, implement and adequately respond to Ms Ah Sam-Rioli's suggestions that Hawthorn undertake Cultural Awareness and Safety Training.

305. By reason of the conduct set out at Part B.5 above. Hawthorn, including by way of its servants and agents was negligent and breached the duty of care owed to Mr Miller-Lewis.

Particulars of negligence

(a) Failing to comply with the reasonable standard of care from time to time;

(b) Engaging in and failing to prevent discrimination and harmful conduct, specifically:

i. The personal control conduct;

ii. The personally harmful conduct;

iii. The family control and interference conduct, or alternatively the family control requirement;

(c) Engaging in the inadequate systems conduct;

(d) Imposing the racist culture condition;

(e) Failing to take reasonable steps to ensure and provide a culturally safe workplace.

E. DAMAGES

E.1 General damages

306. As a consequence of the unlawful discrimination and/or the negligence, Mr Peterson suffered injury, loss and damage.

Particulars

Mr Peterson suffered distress, pain and suffering.

Mr Peterson suffered psychological harm.

Mr Peterson suffered personal harm, including cultural harm and/or loss of cultural fulfilment.

Mr Peterson suffered loss of earnings and loss of earning capacity.

Further particulars will be provided on the filing of expert evidence.

307. As a consequence of the unlawful discrimination and/or the negligence, Mr Rioli suffered injury, loss and damage.

Particulars

Mr Rioli suffered distress.

Mr Rioli suffered psychological harm.

Mr Rioli suffered personal harm, including cultural harm and/or loss of cultural fulfilment.

Mr Rioli suffered loss of earnings and loss of earning capacity.

Further particulars will be provided on the filing of expert evidence.

308. As a consequence of the unlawful discrimination, Ms Ah Sam-Rioli suffered injury, loss and damage.

Particulars

Ms Ah Sam-Rioli suffered distress.

Ms Ah Sam-Rioli suffered psychological harm.

Ms Ah Sam-Rioli suffered personal harm, including cultural harm and/or loss of cultural fulfilment.

Further particulars will be provided on the filing of expert evidence.

309. As a consequence of the unlawful discrimination and/or the negligence, Mr Miller-Lewis suffered injury, loss and damage.

Particulars

Mr Miller-Lewis suffered distress, pain and suffering.

Mr Miller-Lewis suffered psychological harm.

Mr Miller-Lewis suffered personal harm, including cultural harm and/or loss of cultural fulfilment.

Mr Miller-Lewis suffered loss of earnings and loss of earning capacity.

Further particulars will be provided on the filing of expert evidence.

310. As a consequence of the unlawful discrimination, Ms Lewis suffered injury, loss and damage.

Particulars

Ms Lewis suffered distress.

Ms Lewis suffered psychological harm.

Ms Lewis suffered personal harm.

Further particulars will be provided on the filing of expert evidence.

311. As a consequence of the unlawful discrimination, Mr Egan suffered injury, loss and damage.

Particulars

Mr Egan suffered distress.

Mr Egan suffered psychological harm.

Mr Egan suffered personal harm, including cultural harm and/or loss of cultural fulfilment.

Mr Egan suffered loss of earnings and loss of earning capacity.

Further particulars will be provided on the filing of expert evidence.

E.2 Aggravated and exemplary damages

312. By reason of the subsequent conduct set out at [105], [106], [161], [162] and Part B.7 above, Hawthorn acted in a manner that:

(a) aggravated and worsened the loss that the Applicants would have otherwise suffered;

(b) in respect of the negligence claim, was in knowing, deliberate, callous, flagrant and/or contumelious disregard of the rights of the Mr Peterson, Mr Rioli, Ms Ah Sam-Rioli, Mr Miller-Lewis and Ms Lewis, or was otherwise deserving of the Court's condemnation and deterrence;

and so is liable to pay each of the Applicants aggravated damages and further, in respect of the negligence claim, exemplary damages.

Date: 26 July 2024

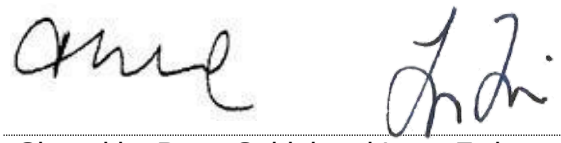
Signed by Peter Seidel and Leon Zwier,
Arnold Bloch Leibler
Lawyers for the Applicants

This pleading was prepared by Kathleen Foley SC, Emrys Nekvapil SC, Stella Gold, Jim Hartley and Julian R Murphy.

Certificate of lawyer

We Peter Seidel and Leon Zwier certify to the Court that, in relation to the statement of claim filed on behalf of the Applicants, the factual and legal material available to us at present provides a proper basis for each allegation in the pleading.

Date: 26 July 2024



Signed by Peter Seidel and Leon Zwier,
Arnold Bloch Leibler
Lawyers for the Applicants

Schedule

No. of 2024

Federal Court of Australia
District Registry: Victoria
Division: General

Applicants

Second Applicant:	Shannyn Ah Sam-Rioli
Third Applicant:	Jermaine Miller-Lewis
Fourth Applicant:	Montanah-Rae Lewis
Fifth Applicant:	Carl Peterson
Sixth Applicant:	Leon Egan

Date: 26 July 2024

NOTICE OF FILING

Details of Filing

Document Lodged:	Statement of Claim - Form 17 - Rule 8.06(1)(a)
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	26/07/2024 3:09:19 PM AEST
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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.