

# ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



## Picken v Australian Football League & Ors [2024] VSC 127

Supreme Court of Victoria, Keogh J, 20 March 2024

A stay of proceedings in a football concussive head injury claim until a class action is determined.

**Key words:** Liability, Victoria, AFL, Concussive Head Injury, Class Action, Stay of Proceedings

1. Footscray Football Club Limited (Western Bulldogs) plays in a national competition conducted by the Australian Football League (AFL). Dr Gary Zimmerman was the club medical officer at the Western Bulldogs, and Dr Jacob Landsberger provided medical services to the Western Bulldogs and its players.
2. Liam Picken (Picken) played Australian football for the Western Bulldogs.
3. Picken commenced proceedings against the AFL, Western Bulldogs and its two medical officers, claiming damages for concussive head injuries he alleged that he suffered during his career as an AFL player.
4. Picken claimed that he had sustained a brain injury with sequelae and a psychological injury. He alleged that he had retained only a partial capacity for employment since 3 March 2018 and that he had been totally incapacitated from undertaking work consistent with his academic, vocational and commercial training.
5. He claimed that, at the direction of the Western Bulldogs, he underwent a number of baseline cognitive tests and that, on some of those tests, his results were below the normal range compared with those of his matched peer group. He alleged that despite these irregular results, he was not referred for retesting and medical assessment, and continued to perform full training and compete in the AFL competition.
6. The AFL admitted that it owed Picken a duty of care, but did not admit the scope of that duty and denied any breach.
7. Two class actions with similar issues and parties were also on foot, and the court stayed these proceedings until multiplicity issues were resolved. On resolution of the issue (refer to [Tuck v Australian Football League](#) [2024] VSC 126), the Court considered whether this proceeding should continue or be stayed until the class action was completed.
8. The Court was obliged to as far as possible to ensure (at [13]):

...all matters in dispute between the parties are completely and finally determined, and all multiplicity of proceedings concerning any of those matters is avoided. [footnote omitted]

9. It was not undesirable that two courts should determine the same dispute, and practical considerations based on common sense and fairness should dictate which action should proceed first.
10. Picken argued that his claim was different from the class action in several respects, but mainly as his complaint was that the AFL failed to ensure that the Western Bulldogs and the doctors complied with testing procedures and responded as required to the results of tests.
11. The Court rejected the application to proceed as the answers to the common questions in the class action were likely to have a material effect on the determination of this proceeding. Further, both proceedings were at an early stage, so there would be costs for the AFL in overlapping preparation, and a risk of inconsistent findings.
12. The Court ordered a stay of proceedings apart from the discovery of documents relevant to the particular circumstances of Picken's claim and for the exchange of expert evidence pertinent to the assessment of damages.

## COMMENT



Refer to the cases of [Zantuck v Richmond Football Club & Ors](#) [2022] VSC 405 and [Tuck v Australian Football League](#) [2024] VSC 126, which are related matters.

## VIEW THE CASE



This case may be viewed at: <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VSC/2024/127.html>

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