

**Further Submission to the Senate Standing  
Committee on Community Affairs**

**Concussions and Repeated Head Trauma in Contact  
Sports**

**Margalit Injury Lawyers**

**12 May 2023**

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We refer to our submission to the Senate Standing Committee on Community Affairs - Concussions and Repeated Head Trauma in Contact Sports dated 17 February 2023 and the evidence given by Margalit Lawyers at the recent public hearing on 26 April 2023.

We are grateful for the opportunity to provide further submissions to this Inquiry to address questions on notice from the Committee at the recent public hearing.

## I. FURTHER SUBMISSION

### A. Question on Notice

The committee asked if there were other areas of the economy or community receiving compensation for concussion-like injuries and requested further information in relation to their entitlements.

There is a significant portion of the community receiving compensation for head injuries through statutory compensation schemes.

Our further submission will predominantly focus on the risks associated with relying exclusively on non-statutory compensation funds, such as the AFL Players Injury and Hardship Fund and The Geoff Pryor Health & Wellbeing Hardship Fund, as well as common law claims for negligence. The AFL also made reference in their submissions to the AFL Past Player Program that is both funded and administered by the AFL and is currently undergoing 'substantive restructure'. This program must also be treated with caution for the same reasons explored in these further submissions.

We will compare and contrast the private funds alongside the workers' compensation and transport accident statutory schemes to show how privately funded compensation funds fall alarmingly short in terms of adequately compensating AFL players suffering from the long-term effects of concussion-related injury.

### *B. Common law claims for negligence are not sufficient, on their own, to adequately compensate players suffering from the long-term effects of concussion related injury.*

A common law claim for negligence may be brought where a duty of care has been breached and has caused a person to sustain injury. As stated in our first submission, compensation for such claims is capped at:

- \$660,970 for pain and suffering damages; and
- \$1,518,180 for economic loss damages.<sup>1</sup>

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<sup>1</sup> 'Notice of Indexed Benefit Levels and Other Amounts in Accordance With Division 1 Of Part 13 of The Workplace Injury Rehabilitation And Compensation Act 2013' in Victoria, *Victoria Government Gazette*, No G26, 30 June 2022, 2901.

The requirement to establish fault on the part of another party is often a barrier to persons seeking common law compensation. In concussion cases especially, there are individuals who cannot prove fault due to legal technicalities or are barred due to time limitation periods.

Furthermore, there may be injured players who also do not fall within the scope of the class action due to legal technicalities.

These persons have no avenue available to them to fund life-long medical expenses or compensate them for long-term impairment. For this reason, a statutory scheme is critical to ensure that players have access to appropriate treatments and ongoing financial support where they cannot work due to their concussion related injuries.

*C. Comparison of current statutory compensation schemes in Victoria with AFL Players Injury and Hardship Fund and the Geoff Pryor Health & Wellbeing Hardship Fund.*

Each of the Australian states and territories have workers' compensation and transport accident compensation schemes to provide compensation to persons injured either in the course of their employment or in a transport accident.

These statutory schemes provide 'no-fault' compensation primarily by way of lump sum compensation, income support, and payment of medical treatment and expenses. An injured person can access compensation even where their injuries were caused by their own fault. As acknowledged in our first submission, the compensation funds established by the Australian Football Player's Association are a step in the right direction but fall significantly short in adequately compensating players suffering from the long term effects of concussion related injury.

*1. Medical and like expenses*

In Victoria, persons injured in the course of their employment and in transport accidents in Victoria are entitled to payment or reimbursement of reasonable medical and like expenses related to their work or transport related injury.<sup>2</sup> Injured persons remain entitled to medical and like expenses for life, so long as such expenses are reasonable and related to the work or transport injury.

Conversely, under the AFL Players Injury and Hardship Fund (APIHF), players can receive reimbursement of medical costs up to:

- \$8,000 under the umbrella of 'Lifetime Health Care' for joint injuries and dental procedures related to football; and
- Hospital excess up to \$500.<sup>3</sup>

Those suffering from the long-term effects of concussion-related injury often require life-long support to manage their condition such as equipment and lifestyle aids, neurological assessments and therapy, speech pathology, alternate supportive accommodation such as

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<sup>2</sup> *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic) s 224 and *Transport Accident Act 1986* (Vic) s 60.

<sup>3</sup> AFL Players Association, *AFLPA Injury Hardship Fund Handbook 2020* (online at 2 May 2023) p 4.

nursing homes or rehabilitation facilities, and more.<sup>4</sup> The costs of such expenses have the potential to well exceed \$8,000.

In addition, the AFLPA Injury Hardship Fund Handbook states that the \$8,000 amount can be used for 'joint injuries and dental procedures'. On a strict reading, concussion injuries are excluded. If this is not the case, there is no information readily available online. If lawyers cannot find a clear answer, a person suffering from a brain injury could not possibly find the information.

Further, a significant portion of possible expenses for treatment, management and support of a brain injury are likely to fall outside the category of 'medical' expenses. The Victorian workers' compensation and Transport Accident Commission (TAC) no-fault schemes offer funding for medical and 'like' expenses which ensures injured persons are not limited only to medical expenses.

Our firm has acted for many people in the Victorian statutory schemes suffering from brain injuries who have been able to access funding for home modifications, learning and return to work support, speech pathology, household cleaning and maintenance services, mobility aids, orthopaedic mattresses, childcare and more.

## 2. Lump-sum impairment benefits

Another striking difference between APIHF and The Geoff Pryor Health & Wellbeing Hardship fund (GPHWH) compared to the no-fault statutory schemes in Victoria is access to lump sum benefits for permanent impairment.

The APIHF does not entitle players to any lump-sum payment beyond a 'football ending injury payment', being a payment based on their age and a percentage of the base value of the final year of their standard playing contract.<sup>5</sup>

The GPHWH only offers players '\$5,000 or a more extensive benefit for those suffering significant temporary or long-term hardship'.<sup>6</sup> The grant does not appear to be paid as a lump-sum to players. The Player's Trust states that:

*'The amount of grant assistance or the provision of any services or benefits provided to a player will be at the complete discretion of the Committee. No funds will be paid directly to any applicant rather the assistance will be directed to facilitating the provision of appropriate services and needs required to address the particular hardship'*.

While not entirely clear, it seems that the \$5,000 benefit is a capped amount (rather than a set lump-sum amount) designed to reimburse medical expenses and/or to compensate players for 'hardship'. Again, if a lawyer is unable to access this information, it would not be possible for a person with a brain injury to access it.

Under the Victorian workers' compensation scheme, an injured person is eligible to receive an impairment benefit between:

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<sup>4</sup> SYNAPSE Australia's Brain Injury Organisation, *Understanding Brain Injury - Recovery and Rehab* <<https://synapse.org.au/understanding-brain-injury/recovery-and-rehab/>> (online at 2 May 2023).

<sup>5</sup> AFL Players Association (n 4) 5.

<sup>6</sup> AFL Players Association (n 4).

- \$19,980 - \$660,970 for a physical injury<sup>7</sup> (after meeting the minimum impairment level of 10%);<sup>8</sup> or
- \$86,360 - \$660,970 for a psychiatric injury<sup>9</sup> (after meeting the minimum impairment level of 30%).<sup>10</sup>

Similarly, under the TAC scheme an injured person is eligible to receive an impairment benefit between \$8,350 and \$381,030<sup>11</sup> for a physical and/or psychiatric injury (after meeting the minimum impairment level of 11%).<sup>12</sup>

We refer the Committee to the following exhibits:

- 'Exhibit 1' which contains the Victorian worker's compensation tables for impairment benefit payments for physical and psychiatric injuries.
- 'Exhibit 2' which contains the TAC compensation table for impairment benefits payments.

Using the exhibits, the committee will see how impairment benefits are paid uniformly and transparently with each compensation award corresponding directly to a percentage level of whole person impairment.

An injured person's level of impairment is assessed in accordance with the *American Medical Association Guide to the Evaluation of Permanent Impairment 4<sup>th</sup> Edition* (AMA Guides). The AMA Guides contain a comprehensive chapter on the assessment of the nervous system, including the central nervous system – Cerebrum or Forebrain, brain stem, spinal cord, muscular and peripheral nervous system, and pain.

For brain injuries, the AMA Guides assign levels of impairment over the minimum 10% and 11% thresholds for 'moderate impairment'<sup>13</sup> which ensures compensation is not limited to only the most severe cases.

We refer the Committee to 'Exhibit 3' which contains extracted tables from the AMA Guides that relate to the assessment of impairment of the brain. We ask that this exhibit not be published due to Copyright. The tables are used by medico-legal doctors who measure each symptom alongside each table. Each result is then combined to determine a percentage of whole person impairment. For example, under table 1, where a worker shows 'moderate impairment in comprehension and production of language symbols of daily living' they will be given a percentage level of impairment between 10-24%. The medico-legal doctor will then

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<sup>7</sup> WorkSafe Victoria, *Compensation Table for Physical Injury*, <[https://www1.worksafe.vic.gov.au/vwa/claimsmanual/Claims\\_Manual/6-specialisedpayments/6.2\\_Impairment\\_Benefits/PDFs/Indexation\\_2022/phys-impairment-current.pdf](https://www1.worksafe.vic.gov.au/vwa/claimsmanual/Claims_Manual/6-specialisedpayments/6.2_Impairment_Benefits/PDFs/Indexation_2022/phys-impairment-current.pdf)> (online at 2 May 2023).

<sup>8</sup> *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic) s 211(2)(a).

<sup>9</sup> WorkSafe Victoria, *Compensation Table for psychiatric Injury*, <[https://www1.worksafe.vic.gov.au/vwa/claimsmanual/Claims\\_Manual/6-specialisedpayments/6.2\\_Impairment\\_Benefits/PDFs/Indexation\\_2022/psych-impairment-current.pdf](https://www1.worksafe.vic.gov.au/vwa/claimsmanual/Claims_Manual/6-specialisedpayments/6.2_Impairment_Benefits/PDFs/Indexation_2022/psych-impairment-current.pdf)> (online at 2 May 2023).

<sup>10</sup> *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic) s 212.

<sup>11</sup> Transport Accident Commission, *Table of Impairment Payments for Accidents on or after 16 December 2004*, <<https://www.tac.vic.gov.au/clients/how-we-can-help/compensation/impairment-benefits?tab=4&drop=1>> (online at 2 May 2023).

<sup>12</sup> *Transport Accident Act 1986* (Vic) s 47 (1)(b).

<sup>13</sup> American Medical Association, *AMA Guides to the Evaluation of Permanent Impairment* (American Medical Association, 4<sup>th</sup> ed, 1993) 141.

utilise other paragraphs in the chapter to determine what level of 'moderate impairment' the person has and will give them a percentage between 10-24%.

As previously discussed, the GPHWH has a \$5,000 payment or 'more extensive benefit for those suffering significant temporary or long-term hardship' available to AFL players. Unlike impairment benefit lump sum payments under the Victorian workers' compensation and TAC schemes, the amount of the GPHWH 'extensive benefit' is not clearly defined or easily accessible to the public. It is also unclear as to whether 'hardship' is determined on a financially based test or impairment-based test.

The requirement for both the Victorian workers' compensation scheme and TAC scheme to use the AMA Guides in all impairment assessments promotes uniformity and predictability in assessments, ensuring that anyone who reaches the thresholds required is adequately compensated for their permanent impairment based on the severity of their injury.

We refer the Committee to the table below which further details the disparity in compensation available under the non-statutory AFL funds, the Victorian WorkCover scheme and Transport Accident Commission scheme.

	Medical & Like Expenses	Income support	Lump-sum benefits for permanent impairment sustained
<b>AFL Players Injury and Hardship Fund</b>	<ul style="list-style-type: none"> <li>Does not expire</li> <li>'Lifetime Health Care' - Reimbursement of medical costs capped at \$8,000 for joint injuries and dental procedures related to football. <sup>14</sup></li> <li>Hospital excess capped at \$500.</li> <li>\$Nil or not stated entitlement to 'like expenses'.</li> </ul>	<ul style="list-style-type: none"> <li>Football ending injury payment, being a payment based on their age and a percentage of the base value of the final year of their standard playing contract.</li> <li>Delisted injury player payment, being a payment at the average weekly wage for a period of four weeks.</li> </ul>	<b>\$Nil</b>
<b>The Geoff Pryor Health &amp; Wellbeing Hardship fund</b>	<ul style="list-style-type: none"> <li>\$5,000 or a more extensive benefit for those suffering significant temporary or long-term hardship. The amount of the 'extensive benefit' is not clearly defined or accessible to the public.</li> </ul>	<b>\$Nil</b>	<b>\$Nil</b>
<b>WorkCover (Victoria)</b>	<ul style="list-style-type: none"> <li>Not capped. WorkSafe will pay 'the reasonable costs of medical and like services relating to a work-related injury or illness'.</li> <li>Does not expire. A worker can claim medical and like expenses anytime, so long as they remain reasonable and related to a workplace injury.</li> <li>Includes medical and 'like' expenses. Included but not limited to, gym/swim programs, cleaning and household maintenance, childcare, home/car modifications, footwear, mattresses/pillows, education and return to work services etc.</li> </ul>	<ul style="list-style-type: none"> <li>Worker is paid a portion of their Pre-Injury Average Weekly Earnings (PIAWE). 0-13 weeks - 95% <sup>15</sup> 13-130 weeks - 80% <sup>16</sup> * Weekly payments are limited at twice the State average weekly earnings.</li> <li>Weekly payments will continue beyond 130 weeks and up to retirement where worker has no current work capacity and that incapacity is likely to continue indefinitely.<sup>17</sup> If so, payments continue at 80% of the worker's PIAWE.</li> </ul>	<ul style="list-style-type: none"> <li>Impairment benefit lump-sum</li> <li>\$19,980 - \$660,970 (physical impairment). A minimum 10% impairment level of impairment is required.</li> <li>\$86,360 - \$660,970 (psychiatric impairment). Minimum 30% level of impairment required.</li> <li>No time limitation period to lodge impairment claim.</li> </ul>
<b>Transport Accident Commission (Victoria)</b>	<ul style="list-style-type: none"> <li>Not capped. TAC will pay the reasonable costs of medical and like services relating to an injury sustained in a transport accident.</li> <li>Does not expire. An injured person can claim medical and like expenses anytime, so long as they remain reasonable and related to the subject transport accident.</li> <li>Includes medical and like expenses. Included but not limited the items listed above under WorkCover medical and like expenses.</li> </ul>	<ul style="list-style-type: none"> <li>The TAC will make 'Loss of Earnings' (LOE) payments to an injured person for 18 months <sup>18</sup> at 80% of the injured person's pre-accident weekly earnings. <sup>19</sup></li> <li>After 18 months the TAC will assess whether a person has a 'Loss of Earning Capacity' (LOEC). If so, benefits are payable for another 18 months. <sup>20</sup></li> <li>After the expiry of the second 18-month period, an injured person is not entitled to LOE or LOEC payments unless they are determined to have a 50% impairment or greater. <sup>21</sup></li> </ul>	<ul style="list-style-type: none"> <li>Impairment benefit lump-sum</li> <li>\$8,350 - \$381,030. Minimum 11% impairment level of impairment required. <sup>22</sup></li> </ul>

<sup>14</sup> AFL Players Association (n 4).

<sup>15</sup> *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic) s 161.

<sup>16</sup> *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic) s 162.

<sup>17</sup> *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic) s 165.

<sup>18</sup> *Transport Accident Act 1986* (Vic) s 6.

<sup>19</sup> *Transport Accident Act 1986* (Vic) s 44.

<sup>20</sup> *Transport Accident Act 1986* (Vic) s 44.

<sup>21</sup> *Transport Accident Act 1986* (Vic) s 53(4).

<sup>22</sup> *Transport Accident Act 1986* (Vic) s 47 (1)(b).

### 3. *Administering non-statutory compensation funds*

In addition to the vast gaps in compensation available between the Victorian worker's compensation scheme and TAC scheme when compared with the APIHF and GPHWH, there are also potential issues associated with the administering of the two non-statutory funds.

#### *a. Transparency*

A major issue is transparency of the decision-making process. The APIHF directs players to contact Head of Alumni or the Alumni Programs Manager by telephone or email in relation to making a claim for lifetime health care, hospital excess reimbursements and past player hardship support.<sup>23</sup> There is limited information accessible to the public regarding the claims process and the criteria for approval. Any grants of compensation appear to be entirely at the discretion of the decision maker at the fund. It is unclear as to whether written reasons are provided to players if grants of compensation are rejected.

The GPHWH has some eligibility criteria, however the list is non-exhaustive and completely discretionary.<sup>24</sup> The Victorian workers' compensation scheme and TAC scheme requires that any adverse decisions must be given to the injured person in writing and include information regarding their avenues for redress.

#### *b. Avenues for redress*

A key deficiency of the APIHF and GPHWH is that there is no established dispute process or avenue for redress carved out for players who disagree with an adverse decision made by the funds.

In contrast, the Victorian workers' compensation scheme allows workers to refer a dispute pertaining to an adverse decision to the Workplace Injury Commission (formerly the Accident Compensation Conciliation Service). In our experience, disputes (particularly relating to medical and like expenses) are often quickly and positively resolved at conciliation. If resolution is not possible, disputes are promptly referred to either a medical panel or the worker is provided with a Genuine Dispute Certificate which allows the worker to issue a Court proceeding. While the delays and costs associated with the dispute process are limitations evident in any statutory scheme (including the workers' compensation scheme), at a minimum, the workers' compensation dispute process is clear and predictable.

Similarly, the TAC scheme has a built-in informal Dispute Resolution Application process where the TAC works with injured people (and their lawyers if represented) to resolve a dispute. If the dispute cannot be resolved, the person may issue proceedings in the Victorian Civil and Administrative Tribunal. The TAC scheme also has a built-in costs structure that allows lawyers to recover the costs of representing an injured person in a Dispute Resolution Application.<sup>25</sup>

Lawyers' participation in the informal dispute process helps to promote procedural fairness

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<sup>23</sup> AFL Players Association (n 4) 5.

<sup>24</sup> AFL Players' Association, *The Players' Trust*, <https://s.afl.com.au/staticfile/AFL%20Tenant/AdelaideCrows/PDFs/Players%20Trust%20Booklet.pdf> (online at 2 May 2023)

<sup>25</sup> Transport Accident Commission, *TAC Protocols – Legal Costs effective from 1 July 2022*, <[https://www.tac.vic.gov.au/\\_\\_data/assets/pdf\\_file/0010/547849/Legal-costs-1-July-2022.pdf](https://www.tac.vic.gov.au/__data/assets/pdf_file/0010/547849/Legal-costs-1-July-2022.pdf)> (online at 2 May 2023).



and ensures injured persons have their rights advocated. It would be difficult for a player to be legally represented in any dispute proceeding with the APIHF because there does not appear to be any additional allowance made for the payment of legal fees in such circumstances. Many players are unlikely to be able to fund the cost of legal representation themselves due to financial hardship (as discussed in our first submission).

#### 4. *Funding*

The APIHF is largely self-funded through the Collective Bargaining Agreement 2017-2022 (CBA) between the AFL and the AFL Players' Association. The APIHF receives quarterly contributions from the AFL. In 2022, the AFL contributed \$4,200,000 to the APIHF, as agreed in the CBA.<sup>26</sup>

The AFL contributions to the fund are entirely dependent on agreement being reached with the AFL Player's Association. Not only is there no guarantee that contributions will continue but there is also no guarantee or certainty that the contributions will increase in response to the growing number of players suffering from the long-term effects of concussion related injury. It is evident from the James Hardie Industries example below that self-funded non-statutory funds like the APIHF carry a high risk of underfunding and ultimately undercompensating.

#### 5. *Expertise*

The AFL and the AFL Players' Association are in the business of football, not administering a compensation fund. They do not have the requisite experience to administer a compensation fund. Furthermore, there is also the risk of unconscious bias affecting the decision makers involved in administering the fund.

#### *D. An example of a private fund gone wrong*

The highly publicised and controversial case of asbestos manufacturer, James Hardie Industries, is useful in considering the utility of statutory and non-statutory frameworks for compensating injured people.

Victims of asbestos-related diseases and AFL players suffering from the long-term effects of concussion related injury share a number of similarities. Both types of injury may or may not manifest in the course of a person's life and potentially affected persons live terrified of the uncertainty their future may hold. Victims of asbestos-related diseases fought for years (and continue to fight) to be adequately compensated, much like AFL players are doing now. The James Hardie Industries case highlights the significant shortcomings and risks associated with relying on non-statutory compensation funds to compensate injured people.

By way of background: in 2001, in response to the number of asbestos disease related claims increasing, James Hardie Industries created the Medical Research and Compensation Fund (MRCF). The MRCF was created to ensure that persons who were suffering from debilitating asbestos-related illness or death caused by James Hardie Industries were appropriately compensated. From the MRCF's inception, James Hardie Industries had assured the community that the fund was 'fully funded'<sup>27</sup> and would be in a financial position to compensate all victims of asbestos related illness or death well into the future.

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<sup>26</sup> AFL Players Association, Collective Bargaining Agreement, <<https://www.aflplayers.com.au/industryhome/cba>> (online at 4 May 2023).

<sup>27</sup> Paul von Nessen and Abe Herzberg, 'James Hardie's asbestos liability legacy in Australia: Disclosure, corporate social responsibility and the power of persuasion Australian Journal of Corporate Law' (2011) 26 *Australian Journal of Corporate Law*, 57.

By December 2001, James Hardie Industries had moved the 'non-asbestos tainted' company entities to the Netherlands, leaving the non-profitable asbestos-related entities in Australia.<sup>28</sup> It was soon evident that, despite James Hardie Industries' assertions that the MRCF was adequately funded, the number of potential future claims had been grossly underestimated and that victims were likely to be left uncompensated.<sup>29</sup> In addition to the inadequate funding, because the profitable entities were moved to the Netherlands, victims had no way of forcing James Hardie Industries and associated entities to contribute more funds to the MRCF because the entities left in Australia had no funds to contribute.<sup>30</sup>

Ultimately, the New South Wales Government intervened and launched the Special Commission of Inquiry into the James Hardie company restructure. In 2005, the Inquiry found that James Hardie Industries had underfunded the MRCF by approximately \$2 Billion.<sup>31</sup>

Following the Inquiry, James Hardie Industries entered into a binding agreement with the New South Wales government to provide long term funding to the newly created Asbestos Injuries Compensation Fund Ltd (AICF).<sup>32</sup> It is apparent that the major incentive for James Hardie Industries to reach a binding agreement with the New South Wales government was the risk of being subject to adverse legislative action.

The James Hardie case is a cautionary tale of how non-statutory compensation funds pose a risk to injured persons of being severely undercompensated or not compensated at all. It was only at the point of government intervention that a binding agreement was reached with James Hardie Industries to pay 35% of its yearly operating cash flow into the new AICF. Even following the agreement, the risk to injured people continued because funding the AICF depended on James Hardie Industries' profitability. If the company was not profitable, or simply became less profitable, the contributions would cease or substantially reduce. This concern was realised during the financial crisis in 2009 where James Hardie Industries did not any contribution to the fund that year.<sup>33</sup>

The AICF remains funded by contributions from James Hardie Industries' operating cash flow each year, however, there are still significant concerns that the AICF is underfunded with reportedly an average of one person per week still suing James Hardie entities.<sup>34</sup>

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<sup>28</sup> Ibid, 56.

<sup>29</sup> Ibid, 57.

<sup>30</sup> Ibid.

<sup>31</sup> Vicky Comino, 'The challenge of Corporate Law Enforcement in Australia' (2009) 23 Australian Journal of Corporate Law 233, 240.

<sup>32</sup> Ibid.

<sup>33</sup> Ibid, 259.

<sup>34</sup> Myriam Robin, 'James Hardie stopped Funding Asbestos Research the Moment it Could', *The Australian Financial Review* (online, 4 May 2023) <<https://www.afr.com/rear-window/james-hardie-stopped-funding-asbestos-research-the-moment-it-could-20201001-p560z8#:~:text=The%20ASX-listed%2C%20Chicago-headquartered%20multinational%20continues%20to%20make%20hefty,of%20its%20operating%20cash%20flow%20into%20the%20scheme>>. See also Heather McNeill, 'One person a week suing James Hardie as WA becomes only state with asbestos cases still on the rise', *WA Today*, (online, 4 May 2023) <[https://www.watoday.com.au/national/western-australia/one-person-a-week-suing-james-hardie-as-wa-becomes-only-state-with-asbestos-cases-still-on-the-rise-20191114-p53ari.html?\\_gl=1\\*86ltdo\\*\\_ga\\*MjEwNTUzMjg2My4xNjgzMTYxNjc3\\*\\_ga\\_7P81FZJZ1C\\*MTY4MzE2MTY3Ny4xLjAuMTY4MzE2MTY3Ny42MC4wLjA.&\\_ga=2.22670392.2015443547.1683161677-2105532863.1683161677](https://www.watoday.com.au/national/western-australia/one-person-a-week-suing-james-hardie-as-wa-becomes-only-state-with-asbestos-cases-still-on-the-rise-20191114-p53ari.html?_gl=1*86ltdo*_ga*MjEwNTUzMjg2My4xNjgzMTYxNjc3*_ga_7P81FZJZ1C*MTY4MzE2MTY3Ny4xLjAuMTY4MzE2MTY3Ny42MC4wLjA.&_ga=2.22670392.2015443547.1683161677-2105532863.1683161677)>.

## **II. CONCLUSION**

The current framework for compensating players suffering from the long-term effects of concussion is wholly inadequate because the legal system does not adopt appropriate measures to ensure that the basic medical and economic needs of injured players are met.

We accept that non-statutory funds are a step in the right direction, particularly in the absence of any statutory scheme for AFL players, however these non-statutory funds fall well short in guaranteeing injured people the same certainty, transparency, fairness, and adequacy of compensation that statutory schemes promote.

## **III. RECOMMENDATIONS**

We maintain our recommendations contained in our first submission. Crucially, we emphasise the need for a statutory framework to promote transparency, predictability, procedural fairness and equality in compensation awards made to players.

Most importantly, a statutory scheme is critical in ensuring that players suffering from the long-term effects of concussion receive adequate financial and medical support to appropriately manage their condition for life.

## IV. REFERENCES

### A Articles/Books/Reports

American Medical Association, *AMA Guides to the Evaluation of Permanent Impairment* (American Medical Association, 4<sup>th</sup> ed, 1993)

Comino, Vicky 'The challenge of Corporate Law Enforcement in Australia' (2009) 23 *Australian Journal of Corporate Law* 233.

McNeill, Heather 'One person a week suing James Hardie as WA becomes only state with asbestos cases still on the rise', *WA Today*, (online, 4 May 2023) <[https://www.watoday.com.au/national/western-australia/one-person-a-week-suing-james-hardie-as-wa-becomes-only-state-with-asbestos-cases-still-on-the-rise-20191114-p53ari.html?\\_gl=1\\*86ltdo\\*\\_ga\\*MjEwNTUzMjg2My4xNjgzMTYxNjc3\\*\\_ga\\_7P81FZJZ1C\\*MTY4MzE2MTY3Ny4xLjAuMTY4MzE2MTY3Ny42MC4wLjA.&\\_ga=2.22670392.2015443547.1683161677-2105532863.1683161677](https://www.watoday.com.au/national/western-australia/one-person-a-week-suing-james-hardie-as-wa-becomes-only-state-with-asbestos-cases-still-on-the-rise-20191114-p53ari.html?_gl=1*86ltdo*_ga*MjEwNTUzMjg2My4xNjgzMTYxNjc3*_ga_7P81FZJZ1C*MTY4MzE2MTY3Ny4xLjAuMTY4MzE2MTY3Ny42MC4wLjA.&_ga=2.22670392.2015443547.1683161677-2105532863.1683161677)>.

Robin, Myriam 'James Hardie stopped Funding Asbestos Research the Moment it Could', *The Australian Financial Review* (online, 4 May 2023) <<https://www.afr.com/rear-window/james-hardie-stopped-funding-asbestos-research-the-moment-it-could-20201001-p560z8#:~:text=The%20ASX-listed%2C%20Chicagoheadquartered%20multinational%20continues%20to%20make%20hefty,of%20its%20operating%20cash%20flow%20into%20the%20scheme>>.

Von Nessen, Paul and Abe Herzberg, 'James Hardie's asbestos liability legacy in Australia: Disclosure, corporate social responsibility and the power of persuasion *Australian Journal of Corporate Law*' (2011) 26 *Australian Journal of Corporate Law*.

### B Legislation

*Transport Accident Act 1986* (Vic)

*Workplace Injury Rehabilitation and Compensation Act 2013* (Vic)

### C Other

AFL Players Association, *AFLPA Injury Hardship Fund Handbook 2020* (online at 2 May 2023).

AFL Players Association, *Collective Bargaining Agreement*, <<https://www.aflplayers.com.au/industryhome/cba>>. (online at 4 May 2023).

AFL Players' Association, *The Players' Trust*, <https://s.afl.com.au/staticfile/AFL%20Tenant/AdelaideCrows/PDFs/Players%20Trust%20Booklet.pdf>

Transport Accident Commission, *Table of Impairment Payments for Accidents on or after 16 December 2004*, < <https://www.tac.vic.gov.au/clients/how-we-can-help/compensation/impairment-benefits?tab=4&drop=1>> (online at 2 May 2023).

Transport Accident Commission, *TAC Protocols – Legal Costs effective from 1 July 2022*, <[https://www.tac.vic.gov.au/\\_\\_data/assets/pdf\\_file/0010/547849/Legal-costs-1-July-2022.pdf](https://www.tac.vic.gov.au/__data/assets/pdf_file/0010/547849/Legal-costs-1-July-2022.pdf)> (online at 2 May 2023).

SYNAPSE Australia's Brain Injury Organisation, *Understanding Brain Injury - Recovery and Rehab* <<https://synapse.org.au/understanding-brain-injury/recovery-and-rehab/>> (online at 2 May 2023).

WorkSafe Victoria, *Compensation Table for Physical Injury*, <[https://www1.worksafe.vic.gov.au/vwa/claimsmanual/Claims\\_Manual/6-specialisedpayments/6.2\\_Impairment\\_Benefits/PDFs/Indexation\\_2022/phys-impairment-current.pdf](https://www1.worksafe.vic.gov.au/vwa/claimsmanual/Claims_Manual/6-specialisedpayments/6.2_Impairment_Benefits/PDFs/Indexation_2022/phys-impairment-current.pdf)> (online at 2 May 2023).

WorkSafe Victoria, *Compensation Table for psychiatric Injury*, <[https://www1.worksafe.vic.gov.au/vwa/claimsmanual/Claims\\_Manual/6-specialised-payments/6.2\\_Impairment\\_Benefits/PDFs/Indexation\\_2022/psych-impairment-current.pdf](https://www1.worksafe.vic.gov.au/vwa/claimsmanual/Claims_Manual/6-specialised-payments/6.2_Impairment_Benefits/PDFs/Indexation_2022/psych-impairment-current.pdf)> (online at 2 May 2023).

## **Exhibit 1**

**Victorian worker's compensation tables for impairment benefit payments for physical and psychiatric injuries.**

Physical Injuries

Com- bined	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23
0-9	\$0	\$0	\$0	\$0	\$0	\$0	\$0
10	\$19,980	\$20,280	\$20,720	\$21,140	\$21,560	\$21,840	\$22,390
11	\$22,990	\$23,330	\$23,840	\$24,320	\$24,800	\$25,120	\$25,750
12	\$26,000	\$26,380	\$26,960	\$27,500	\$28,040	\$28,400	\$29,110
13	\$29,010	\$29,430	\$30,080	\$30,680	\$31,280	\$31,680	\$32,470
14	\$32,020	\$32,480	\$33,200	\$33,860	\$34,520	\$34,960	\$35,830
15	\$35,030	\$35,530	\$36,320	\$37,040	\$37,760	\$38,240	\$39,190
16	\$38,040	\$38,580	\$39,440	\$40,220	\$41,000	\$41,520	\$42,550
17	\$41,050	\$41,630	\$42,560	\$43,400	\$44,240	\$44,800	\$45,910
18	\$44,060	\$44,680	\$45,680	\$46,580	\$47,480	\$48,080	\$49,270
19	\$47,070	\$47,730	\$48,800	\$49,760	\$50,720	\$51,360	\$52,630
20	\$50,080	\$50,780	\$51,920	\$52,940	\$53,960	\$54,640	\$55,990
21	\$53,090	\$53,830	\$55,040	\$56,120	\$57,200	\$57,920	\$59,350
22	\$56,100	\$56,880	\$58,160	\$59,300	\$60,440	\$61,200	\$62,710
23	\$59,110	\$59,930	\$61,280	\$62,480	\$63,680	\$64,480	\$66,070
24	\$62,120	\$62,980	\$64,400	\$65,660	\$66,920	\$67,760	\$69,430
25	\$65,130	\$66,030	\$67,520	\$68,840	\$70,160	\$71,040	\$72,790
26	\$68,140	\$69,080	\$70,640	\$72,020	\$73,400	\$74,320	\$76,150
27	\$71,150	\$72,130	\$73,760	\$75,200	\$76,640	\$77,600	\$79,510
28	\$74,160	\$75,180	\$76,880	\$78,380	\$79,880	\$80,880	\$82,870
29	\$77,170	\$78,230	\$80,000	\$81,560	\$83,120	\$84,160	\$86,230
30	\$80,180	\$81,280	\$83,120	\$84,740	\$86,360	\$87,440	\$89,590
31	\$84,910	\$86,160	\$88,040	\$89,850	\$91,660	\$92,840	\$95,190
32	\$89,900	\$91,220	\$93,210	\$95,130	\$97,050	\$98,300	\$100,790
33	\$94,890	\$96,280	\$98,380	\$100,410	\$102,440	\$103,760	\$106,390
34	\$99,880	\$101,340	\$103,550	\$105,690	\$107,830	\$109,220	\$111,990
35	\$104,870	\$106,400	\$108,720	\$110,970	\$113,220	\$114,680	\$117,590
36	\$109,860	\$111,460	\$113,890	\$116,250	\$118,610	\$120,140	\$123,190
37	\$114,850	\$116,520	\$119,060	\$121,530	\$124,000	\$125,600	\$128,790
38	\$119,840	\$121,580	\$124,230	\$126,810	\$129,390	\$131,060	\$134,390
39	\$124,830	\$126,640	\$129,400	\$132,090	\$134,780	\$136,520	\$139,990
40	\$129,820	\$131,700	\$134,570	\$137,370	\$140,170	\$141,980	\$145,590
41	\$134,810	\$136,760	\$139,740	\$142,650	\$145,560	\$147,440	\$151,190
42	\$139,800	\$141,820	\$144,910	\$147,930	\$150,950	\$152,900	\$156,790
43	\$144,790	\$146,880	\$150,080	\$153,210	\$156,340	\$158,360	\$162,390
44	\$149,780	\$151,940	\$155,250	\$158,490	\$161,730	\$163,820	\$167,990
45	\$154,770	\$157,000	\$160,420	\$163,770	\$167,120	\$169,280	\$173,590

Com- bined	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23
46	\$159,760	\$162,060	\$165,590	\$169,050	\$172,510	\$174,740	\$179,190
47	\$164,750	\$167,120	\$170,760	\$174,330	\$177,900	\$180,200	\$184,790
48	\$169,740	\$172,180	\$175,930	\$179,610	\$183,290	\$185,660	\$190,390
49	\$174,730	\$177,240	\$181,100	\$184,890	\$188,680	\$191,120	\$195,990
50	\$179,720	\$182,300	\$186,270	\$190,170	\$194,070	\$196,580	\$201,590
51	\$184,710	\$187,360	\$191,440	\$195,450	\$199,460	\$202,040	\$207,190
52	\$189,700	\$192,420	\$196,610	\$200,730	\$204,850	\$207,500	\$212,790
53	\$194,690	\$197,480	\$201,780	\$206,010	\$210,240	\$212,960	\$218,390
54	\$199,680	\$202,540	\$206,950	\$211,290	\$215,630	\$218,420	\$223,990
55	\$204,670	\$207,600	\$212,120	\$216,570	\$221,020	\$223,880	\$229,590
56	\$209,660	\$212,660	\$217,290	\$221,850	\$226,410	\$229,340	\$235,190
57	\$214,650	\$217,720	\$222,460	\$227,130	\$231,800	\$234,800	\$240,790
58	\$219,640	\$222,780	\$227,630	\$232,410	\$237,190	\$240,260	\$246,390
59	\$224,630	\$227,840	\$232,800	\$237,690	\$242,580	\$245,720	\$251,990
60	\$229,620	\$232,900	\$237,970	\$242,970	\$247,970	\$251,180	\$257,590
61	\$234,610	\$237,960	\$243,140	\$248,250	\$253,360	\$256,640	\$263,190
62	\$239,600	\$243,020	\$248,310	\$253,530	\$258,750	\$262,100	\$268,790
63	\$244,590	\$248,080	\$253,480	\$258,810	\$264,140	\$267,560	\$274,390
64	\$249,580	\$253,140	\$258,650	\$264,090	\$269,530	\$273,020	\$279,990
65	\$254,570	\$258,200	\$263,820	\$269,370	\$274,920	\$278,480	\$285,590
66	\$259,560	\$263,260	\$268,990	\$274,650	\$280,310	\$283,940	\$291,190
67	\$264,550	\$268,320	\$274,160	\$279,930	\$285,700	\$289,400	\$296,790
68	\$269,540	\$273,380	\$279,330	\$285,210	\$291,090	\$294,860	\$302,390
69	\$274,530	\$278,440	\$284,500	\$290,490	\$296,480	\$300,320	\$307,990
70	\$279,520	\$283,500	\$289,670	\$295,770	\$301,870	\$305,780	\$313,590
71	\$309,400	\$313,970	\$320,830	\$327,400	\$333,970	\$338,250	\$346,820
72	\$340,550	\$345,580	\$353,130	\$360,360	\$367,590	\$372,300	\$381,730
73	\$371,700	\$377,190	\$385,430	\$393,320	\$401,210	\$406,350	\$416,640
74	\$402,850	\$408,800	\$417,730	\$426,280	\$434,830	\$440,400	\$451,550
75	\$434,000	\$440,410	\$450,030	\$459,240	\$468,450	\$474,450	\$486,460
76	\$465,150	\$472,020	\$482,330	\$492,200	\$502,070	\$508,500	\$521,370
77	\$496,300	\$503,630	\$514,630	\$525,160	\$535,690	\$542,550	\$556,280
78	\$527,450	\$535,240	\$546,930	\$558,120	\$569,310	\$576,600	\$591,190
79	\$558,600	\$566,850	\$579,230	\$591,080	\$602,930	\$610,650	\$626,100
80	\$589,650	\$598,360	\$611,430	\$623,950	\$636,470	\$644,640	\$660,970
81-100	\$589,650	\$598,360	\$611,430	\$623,950	\$636,470	\$644,640	\$660,970



Psychiatric injuries

Psychiatric WPI %	2020/21	2021/22	2022/23
0 - 29	\$0	\$0	\$0
30	\$86,360	\$87,440	\$89,590
31	\$91,660	\$92,840	\$95,190
32	\$97,050	\$98,300	\$100,790
33	\$102,440	\$103,760	\$106,390
34	\$107,830	\$109,220	\$111,990
35	\$113,220	\$114,680	\$117,590
36	\$118,610	\$120,140	\$123,190
37	\$124,000	\$125,600	\$128,790
38	\$129,390	\$131,060	\$134,390
39	\$134,780	\$136,520	\$139,990
40	\$140,170	\$141,980	\$145,590
41	\$145,560	\$147,440	\$151,190
42	\$150,950	\$152,900	\$156,790
43	\$156,340	\$158,360	\$162,390
44	\$161,730	\$163,820	\$167,990
45	\$167,120	\$169,280	\$173,590
46	\$172,510	\$174,740	\$179,190
47	\$177,900	\$180,200	\$184,790
48	\$183,290	\$185,660	\$190,390
49	\$188,680	\$191,120	\$195,990
50	\$194,070	\$196,580	\$201,590
51	\$199,460	\$202,040	\$207,190
52	\$204,850	\$207,500	\$212,790
53	\$210,240	\$212,960	\$218,390
54	\$215,630	\$218,420	\$223,990
55	\$221,020	\$223,880	\$229,590
56	\$226,410	\$229,340	\$235,190
57	\$231,800	\$234,800	\$240,790
58	\$237,190	\$240,260	\$246,390
59	\$242,580	\$245,720	\$251,990
60	\$247,970	\$251,180	\$257,590
61	\$253,360	\$256,640	\$263,190
62	\$258,750	\$262,100	\$268,790
63	\$264,140	\$267,560	\$274,390
64	\$269,530	\$273,020	\$279,990
65	\$274,920	\$278,480	\$285,590
66	\$280,310	\$283,940	\$291,190

Psychiatric WPI %	2020/21	2021/22	2022/23
67	\$285,700	\$289,400	\$296,790
68	\$291,090	\$294,860	\$302,390
69	\$296,480	\$300,320	\$307,990
70	\$301,870	\$305,780	\$313,590
71	\$333,970	\$338,250	\$346,820
72	\$367,590	\$372,300	\$381,730
73	\$401,210	\$406,350	\$416,640
74	\$434,830	\$440,400	\$451,550
75	\$468,450	\$474,450	\$486,460
76	\$502,070	\$508,500	\$521,370
77	\$535,690	\$542,550	\$556,280
78	\$569,310	\$576,600	\$591,190
79	\$602,930	\$610,650	\$626,100
80	\$636,470	\$644,640	\$660,970
81-100	\$636,470	\$644,640	\$660,970

## **Exhibit 2**

**Transport Accident Commission compensation tables for  
impairment benefit payments.**

The figures below are as of 1 July 2022.

Minors benefit \$211

%	\$	%	\$	%	\$
11	\$8,350	41	\$70,140	71	\$151,350
12	\$9,900	42	\$72,400	72	\$154,390
13	\$11,450	43	\$74,660	73	\$157,430
14	\$13,000	44	\$76,920	74	\$160,470
15	\$14,550	45	\$79,180	75	\$163,510
16	\$16,100	46	\$81,440	76	\$166,550
17	\$17,650	47	\$83,700	77	\$169,590
18	\$19,200	48	\$85,960	78	\$172,630
19	\$20,750	49	\$88,220	79	\$175,670
20	\$22,680	50	\$91,110	80	\$181,430
21	\$24,940	51	\$93,750	81	\$187,450
22	\$27,200	52	\$96,390	82	\$193,470

23	\$29,460	53	\$99,030	83	\$199,490
24	\$31,720	54	\$101,670	84	\$205,510
25	\$33,980	55	\$104,310	85	\$211,530
26	\$36,240	56	\$106,950	86	\$217,550
27	\$38,500	57	\$109,590	87	\$223,570
28	\$40,760	58	\$112,230	88	\$229,590
29	\$43,020	59	\$114,870	89	\$235,610
30	\$45,280	60	\$117,910	90	\$247,970
31	\$47,540	61	\$120,950	91	\$260,070
32	\$49,800	62	\$123,990	92	\$272,170
33	\$52,060	63	\$127,030	93	\$284,270
34	\$54,320	64	\$130,070	94	\$296,370
35	\$56,580	65	\$133,110	95	\$308,470
36	\$58,840	66	\$136,150	96	\$320,570
37	\$61,100	67	\$139,190	97	\$332,670
38	\$63,360	68	\$142,230	98	\$344,770
39	\$65,620	69	\$145,270	99	\$356,870
40	\$67,880	70	\$148,310	100	\$381,030