

# SPORT, SPECTATORS AND TRADITIONS OF HATRED

## Responding to Racist Abuse

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This article explores a range of issues relating to racist abuse by spectators at sporting events, with a particular focus on Australian Rules football. It considers some possible options for combating and eliminating racist abuse, keeping in mind the relationships between racism in football and within the community more generally. It is argued that the positive anti-racism strategies and images that have underscored the Australian Football League's approach to on-field racist abuse need to be subjected to careful scrutiny. Importantly, if the community is serious about combating the traditions of racism that have characterised Australian sport, there are significant questions that need to be asked about participants' experiences of racism and racist abuse, not just in elite competitions but at all levels of sport.

### Introduction

Racists are bigots who should not share our planet. They should not share our football terraces either.

— *Mr Nigel Jones (Member for Cheltenham)*  
*House of Commons, 16 April 1999*<sup>1</sup>

Looking back to September 2000 when Australia was enveloped by the Olympic Games and euphoria followed Cathy Freeman's gold medal in the women's 400 metres final, it seems almost easy to forget that among the most long-standing of Australian sporting traditions is the tradition of racism. Freeman's victory — and the achievements of all Indigenous athletes — should be viewed against a history of institutionalised racism in sport.<sup>2</sup> It is 20 years since Colin Tatz observed that 'they're Australian when they're winning,

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<sup>1</sup> *Hansard* House of Commons, 16 April 1999, c 485.

<sup>2</sup> For a comprehensive history, see Tatz (1995).

and Aborigines at all other times', but Tatz's observation is perhaps no less apposite today.<sup>3</sup>

Racism has existed not only in the organisation of sporting bodies and competitions, but also very much in the public consciousness and treatment of Aboriginal and Torres Strait Islander sportswomen and sportsmen. In this article, I examine some aspects of what is arguably the ugliest dimension of the public response to Aboriginal people in sport: racist abuse from spectators. My primary objective is to explore some possible options for combating and eliminating racist abuse at sporting events, keeping in mind the relationships between such aims in football and racism within the community more generally. In this regard, professional Australian Rules football is of particular interest. In focusing on that code, I am not suggesting that the experiences of racism there translate to all sports, but rather that the extent of racism in that sport and the ways in which it has been addressed mean that it is an exemplary site for investigation of the regulation of behaviour both within and beyond sport. This is so even if, at times, it is more useful for illuminating flaws and shortcomings in anti-racism strategies than for identifying effective ways to combat racial hatred.

The national Australian Football League (AFL) competition has in recent years seen a significant number of Indigenous players competing at an elite level where crowds are large and the media spotlight is strong.<sup>4</sup> The AFL was also the first sporting body in the country to institute rules against on-field racial vilification, these having come about in 1995 as a direct result of a complaint by an Indigenous player. The League has a progressive and effective system for the making and resolution of complaints, at least insofar as on-field racist abuse is concerned. Australian Rules football has both a symbolic function in conveying to the community messages that racist abuse is unacceptable, as well as operating in the very concrete dimension of using formal prohibitions on hate speech to combat racist abuse on a day-to-day level.

Whilst significant attention has been paid to on-field abuse, the issue of vilification by spectators has, thus far, not been addressed by the AFL or any other sporting competition in Australia. It is the aim of this article to begin to remedy this shortcoming by examining regulatory and developmental strategies which might curb racist abuse from fans. The article begins by looking briefly at the AFL rules relating to racial vilification by players and then considers the occurrence, ferocity and frequency of spectator abuse in that context. Then, drawing on the experiences of spectator abuse in the United States and the United Kingdom, three approaches are outlined which, to different degrees, present options available for Australian governments and

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<sup>3</sup> Tatz (1980), p 90.

<sup>4</sup> The number of Indigenous players in the AFL has increased dramatically in the last two decades. Of 107 Indigenous players in the history of the AFL/VFL competition, just 18 played in the period 1900–80. In 2000 there were 46 Aboriginal players in the AFL: Australian Football League, 'AFL Information Sheet 18: Influence of Aboriginal Players', [http://www.afl.com.au/insideafl/afl\\_exp/fsheets/aflfac29.pdf](http://www.afl.com.au/insideafl/afl_exp/fsheets/aflfac29.pdf).

sporting bodies. Turning to the absence of action and catalysts for change, the penultimate section explores the (sometimes violent) responses of individual players. In closing, some suggestions are made about how the issues might best be dealt with in Australia.

Throughout this article, it will be suggested that there needs to be further research into the issues and a commitment to comprehensively preventing and prohibiting racist abuse and racism in sport. Without this, Australia's governments and sporting bodies will remain both complacent and complicit in continuing the traditions of racism which have so characterised the experiences of Indigenous athletes.

### Football and Racist Abuse

In 1991, the National Inquiry into Racist Violence in Australia (NIRV) found that:

The problem of racist violence against Aboriginal and Islander people is widespread across Australia. Furthermore, the forms of racist violence manifest themselves in a number of social and institutional arenas ... The Inquiry considers that racism permeates the day-to-day lives of Aboriginal people either through direct acts of violence, intimidation and racist abuse, or through the more insidious processes of discrimination.<sup>5</sup>

Sport was not specifically examined by the Inquiry, but the experience of Indigenous players in Australian Rules football is entirely consistent with the NIRV findings. Even at the highest level of the sport, this was clearly the case until recently and, as will be suggested below, it may well still be the case — especially below the elite level.

Until six years ago, Aboriginal players in the AFL (formerly the VFL) were regularly subjected to racist abuse by players, officials and spectators. When Doug Nicholls arrived at the Fitzroy Football Club in 1932 (after Carlton had earlier declined to recruit him, saying that he smelled), he changed in the corner of the dressing room on his own; when a teammate asked why, he explained: 'We-e-ll, you know how it is.'<sup>6</sup> Syd Jackson, a Carlton star of the 1960s and 1970s, was a regular target for racist slurs.<sup>7</sup> North Melbourne's Jim Krakouer was especially targeted for abuse by opposition players and faced the League Tribunal in the 1980s on numerous striking charges where he had retaliated against racial slurs. At the time, Michael McLean was starting his career with Footscray and, like other Aboriginal players, was regularly abused. He later commented that the League 'knew why [Krakouer] was retaliating but

<sup>5</sup> Human Rights and Equal Opportunity Commission (1991), pp 119, 121 (hereafter cited as *NIRV Report* (1991)).

<sup>6</sup> Piesse (1993), p 2. The teammate was a future star player, Hadyn Bunton, who then made a point of changing with Nicholls as often as possible. Nicholls himself was later to be knighted and become the Governor of South Australia.

<sup>7</sup> Tatz (1995), pp 351–52.

nothing was done about it'.<sup>8</sup> When McLean was asked why he did not speak out until the mid-1990s, he explained: 'If I spoke out nothing would be done. I mean Jimmy Krakouer was a superstar, what hope did I have?'<sup>9</sup> All this occurred in a climate where players and even a coach said they would use racist abuse if it would help them win a game.<sup>10</sup>

Racial slurs in the AFL have received significant attention only when they have occurred between players on the field, and only then since 1995 when Essendon's Michael Long lodged the first ever formal complaint. Unsatisfied with the initial outcome of a hastily organised mediation, Long spoke out publicly and demanded that the AFL institute rules which would mean fines and suspensions for players who engaged in racist abuse.<sup>11</sup>

In June 1995, essentially in direct response to Long's actions and the public's reaction, the AFL implemented 'Rule 30: A Rule to Combat Racial and Religious Vilification' which states:

No player ... 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 the basis of that person's race, religion, colour, descent or national or ethnic origin.<sup>12</sup>

Vilification complaints go first to conciliation and, if this is unsuccessful, to the League tribunal for adjudication and determination of a penalty.<sup>13</sup> The rules do not preclude or limit a player's right to instigate action under discrimination and vilification legislation, though no complaints concerning professional football have yet been lodged under any of the legislative regimes.<sup>14</sup>

<sup>8</sup> 'McLean: You Won't Stop Racial Abuse', *The Australian*, 13 May 1995.

<sup>9</sup> 'McLean: You Won't Stop Racial Abuse', *The Australian*, 13 May 1995.

<sup>10</sup> 'Back to the Dark Ages', *Sydney Morning Herald*, 8 May 1995. See also Warren and Tsoulos (1997), p 36.

<sup>11</sup> 'Long Demands Severe Abuse Penalties', *The Australian*, 18 May 1995.

<sup>12</sup> The rule can be found on the Australian Football League's website at [http://www.afl.com.au/insideafl/afl\\_exp/fsheets/aflfac37.pdf](http://www.afl.com.au/insideafl/afl_exp/fsheets/aflfac37.pdf). The commentary which accompanies the rule has a spin which presents the AFL as more proactive than it seemed at the time: 'Long and Monkurst resolved the issue through a mediation process, but the AFL deemed that a system of education and resolution was required for such incidents.' For a more detailed and critical coverage of the events, see Warren and Tsoulos (1997), pp 38-40; McNamara (1998), pp 88-89; Gardiner (1997), pp 10-12.

<sup>13</sup> For a comprehensive discussion of the rules and procedures, see McNamara (2000), p 5.

<sup>14</sup> There have, however, been discrimination complaints where a player has been disciplined for striking in response to racist abuse from an opposition player: *Mead v Southern Districts Football League* (Human Rights and Equal Opportunity Commission, unreported, 15 November 1991); *Tamanivalu v Western Australia Rugby Union Inc* (Human Rights and Equal Opportunity Commission, unreported, 17 August 1994); see also accompanying text at note 84.

In the AFL competition, the rules seem to have been very effective. There has been a dramatic reduction in the frequency of racist abuse; no longer does it occur, in the words of one Indigenous player, 'week in, week out'.<sup>15</sup> Racist slurs are now few and far between in AFL games. When they do occur, players have a procedure for lodging complaints and what appears to be an effective form of dispute resolution. The problem has not been eliminated, but the rules have unquestionably done a great deal to curb on-field abuse. The AFL influence on other competitions has been remarkable. By 1998 there were vilification rules (often replicating the AFL code) in Australian Rules football in other states; in junior, suburban and regional competitions; and in other football codes. Unfortunately, without the media profile which professional football attracts, the value of vilification rules may be doubtful in lower level competitions.

What is even less clear, however, is whether the development of rules prohibiting on-field racist abuse has had any significant impact on the behaviour of fans at the games.

### *Racist Abuse by Spectators*

The extent and degree of racist abuse by Australian football spectators is uncertain. With little empirical evidence or analysis in the literature, it is difficult to draw any concrete conclusions.<sup>16</sup> However, when the existing material on football is examined and considered in the context of the NIRV findings, there seem to be sufficient grounds to warrant further investigation of racist spectator behaviour. In short, as with on-field abuse, there is every reason to view racial vilification by spectators as an ugly — and infrequently criticised — tradition of Australian Rules football.

Among the few works which discuss spectator abuse is that by Warren and Tsaousis, who note that, in the mid-1990s, whilst the League's vilification rules were developed and debated, 'the issue of racial vilification by spectators remained unaddressed by the AFL, and was the subject of minimal public criticism'.<sup>17</sup> In 1978, Greg Lyons explored the legality of racist spectator behaviour in the light of constant abuse of Aboriginal umpire, Glenn James.<sup>18</sup> Other discussions are limited — even Colin Tatz's seminal history of Aboriginal participation and achievement in sport, *Obstacle Race*, discusses

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<sup>15</sup> McNamara (2000), p 14.

<sup>16</sup> In contrast to the Australian position, there has been a deal of research in the United Kingdom, including Garland and Rowe (1996), especially pp 106–12. For a narrative and contextual documentary of racism and racist abuse in English football, see Hill (1989). Also see generally the report of the British government's inquiry into football in England, *Eliminating Racism from Football: A Report by the Football Task Force to the Minister for Sport* (1998) (hereafter cited as Football Task Force (1998)). Racism in British sport has been the focus of much reform; for the most recent developments, see Commission for Racial Equality & Sport England (2000).

<sup>17</sup> Warren and Tsaousis (1997), p 40.

<sup>18</sup> Lyons (1978).

spectator abuse only briefly.<sup>19</sup> Journalist Garrie Hutchinson's 1984 volume of reflective pieces on League football expresses only in passing some 'surprise' at anti-semitism in the members' stand at the Melbourne Cricket Ground.<sup>20</sup> His principal statement on racist abuse is an apologia embedded in the traditional 'heat of the moment' defence of slurs: 'Racist insults seem to me to have declined ... but in moments of extreme passion an epithet pertaining to a player's racial or ethnic background does spit out.'<sup>21</sup>

Although the analysis of racist abuse is limited, there is nonetheless much evidence that for many years it was prevalent in football crowds. In the AFL, it is arguable that spectator abuse descended to its ugliest level in the 1980s when the Krakouer brothers, Jim and Phil, came to Melbourne from Western Australia. At half time they would be spat upon and abused by spectators as they left the field. *The Age* reported in 1982 that:

Jim Krakouer was hit by a beer can at Essendon when he was standing in the goal square, and every time he went near the boundary line, he could clearly hear the chorus of voices singing out: 'You black bastard'.<sup>22</sup>

Colin Tatz reviews news reports to describe how the MCG crowd 'bayed for the blood' of Jim Krakouer, yelling 'hit him' whenever Krakouer came near.<sup>23</sup> Michael McClean recounted his first game at Victoria Park in the 1980s:

I went to pick up the ball [which had rolled over the boundary line] ... when these four blokes over the fence started screaming, 'You coon, go back where you came from. This is not your fucking country, nigger boy.'<sup>24</sup>

The media reported one fan's point of view:

Of course I sing out 'black bastard,' but I don't mean it. It's all part of being at the footy on a Saturday arvo. The media makes too much of [racial taunts]. It's just a way of letting out your feelings.<sup>25</sup>

The most famous (or infamous) incident occurred in 1993, though its notoriety was achieved not because the abuse was remarkable in any way but because of the player's response. Throughout an entire game, St Kilda star

<sup>19</sup> Tatz (1995), pp 154–55.

<sup>20</sup> Hutchinson (1984), p 78.

<sup>21</sup> Hutchinson (1984), p 115.

<sup>22</sup> 'Blacks in the Big League', *The Age*, 26 April 1982 cited in Warren and Tsaousis (1997), p 34.

<sup>23</sup> Tatz (1993), p 80.

<sup>24</sup> 'McLean: You Won't Stop Racial Abuse', *The Australian*, 13 May 1995.

<sup>25</sup> Warren and Tsaousis (1997), p 37 citing 'Racial Taunts Part of the Game, Say Footy Fans', *Sunday Age*, 25 April 1993.

Nicky Winmar was abused and taunted by opposition Collingwood supporters. At the end of the match, Winmar turned to the Collingwood fans and, lifting his jumper, pointed to his skin. Powerful and evocative, it was captured by photographers, appeared nationally in the media and endures as an image of Aboriginal sporting achievement.<sup>26</sup> Winmar's response will be discussed further below — whether by design or good fortune, it was unique in its effectiveness when contrasted with responses by players (in other football codes) overseas.

To what extent the situation has changed since the mid-1990s is unclear, though it seems there is nothing like the abuse endured by the Krakouers. Although fans now display 'black magic' banners in the crowd, both idolising and mythologising their Aboriginal heroes, this is not enough to support the conclusion that all is well.<sup>27</sup> In 1997, Warren and Tsaousis praised anti-racism publicity by the AFL as a 'starting point', but argued that there could be no real judgment with regard to 'success' or otherwise without detailed research into crowd attitudes to racism.<sup>28</sup> In 1998 and 1999, during interviews about on-field abuse, a number of Aboriginal players said that spectator abuse still occurred, varying with the location of the game.<sup>29</sup>

The most crowd abuse seemed to occur in Victoria while Western Australia had the least.<sup>30</sup> The Collingwood home ground (until 1999, Victoria Park) was described by many as the worst of all. One young footballer who played there told of his experience in the late 1990s:

I was going on to the field. I was waiting on the sidelines ... getting ready, and there was a whole row standing behind me and about 20 or 30 Collingwood supporters were making monkey noises.<sup>31</sup>

But racism was not restricted to one venue: 'They're all as bad as each other. At the Carlton Social Club in their ties or in the outer at Vic Park.'<sup>32</sup> This is reflected by the comments of commentator and former player Garry Lyon, who observed in 2000 that racist abuse was still a feature of spectator behaviour:

In recent years we've had ... incidents with the crowd and player harassment. ... it does seem strange that we, as a society, are prepared

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<sup>26</sup> Notwithstanding this, Collingwood President Allan McAlister later offered the comment that he had no problem with Aboriginal people, 'as long as they conduct[ed] themselves like white people': 'Back to the Dark Ages', *Sydney Morning Herald*, 8 May 1995.

<sup>27</sup> For a critical discussion of characterising players on the basis of biology, see Tatz (1995), p 149.

<sup>28</sup> Warren and Tsaousis (1997), p 46–47.

<sup>29</sup> For a detailed account and analysis of these interviews, see McNamara (2000).

<sup>30</sup> McNamara (2000), p 20.

<sup>31</sup> McNamara (2000), p 20.

<sup>32</sup> McNamara (2000), p 20.

to accept certain standards of behaviour at a sporting venue that, anywhere else would be deemed slanderous, racist at times, and downright antisocial.<sup>33</sup>

More worrying still is the position of players in competitions which are without media attention. It was observed by Indigenous AFL players that in lower level competitions it would be extremely difficult to make a complaint about on-field abuse, even with vilification rules in place.<sup>34</sup> Given the NIRV findings, there seems every chance that spectator abuse in such competitions could be far worse than that in the AFL.

Two points need to be drawn out from the discussion so far. First, although there is little empirical data on the frequency and nature of racist abuse in the AFL, in other professional football codes, or in lower level competitions, there seems good reason to believe that racist abuse from spectators is still at least a significant issue for players in Australia. More research is clearly required with regard to these matters. It cannot be presumed that on-field abuse, which has rightly attracted the attention of the AFL and other competitions, is the only form of vilification which occurs. Nor can it be presumed that the strategies employed to deal with on-field abuse among players will be appropriate and effective for dealing with other manifestations of racial hatred in sport.

The second point — and this is perhaps a consequence of the first — is that there has been scant attention paid in Australia to how spectator abuse might be dealt with. The next part of this article seeks to fill this gap in the literature. That it is difficult to establish the nature and frequency of such abuse should not mean discussion should come to a halt pending further research. On the contrary, it can, at the least, identify possible approaches to combating racist abuse which might be utilised by those who are the targets of racial slurs from spectators and by those organisations which should take responsibility for ensuring racism is dealt with effectively and appropriately. Beyond this, it may provide an initial framework for further consideration of the options and issues.

Racism and crowd behaviour have been dealt with in different ways and to different degrees in the United Kingdom and the United States; both provide useful points of comparison. The next section explores the possibility of educational rather than regulatory options, keeping comparative and contextual issues in mind when considering the possibilities of such approaches in Australia. Following this, the article moves to criminal and civil laws in which avenues of punishment and redress may lie, with international experiences

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<sup>33</sup> 'Great Game Loses Sanity', *Herald Sun*, 14 April 2000.

<sup>34</sup> Some HREOC mediators have said that they have dealt with sport-related complaints from non-professional competitions in recent years: personal communication with the author, February 2000. At the state level, the Victorian Equal Opportunity Commission has dealt with very few sport-related racism complaints in the last three years. This is at odds with the anecdotal evidence of the racism that exists at professional and non-professional levels of a variety of sports.



again providing comparative perspectives. The options discussed are by no means mutually exclusive.

### Education Campaigns

The possibility of an education campaign is perhaps the most constructive and proactive strategy which might be adopted by any or all of the professional football competitions in Australia. It could be run by one competition, such as the AFL, or else run by several competitions or by a range of different sporting bodies as a coalition. In any approach, the support and cooperation of a government agency such as the Human Rights and Equal Opportunity Commission would make for a suitable and appropriate partnership.<sup>35</sup> Footballers have already been involved in community education campaigns against homophobia.<sup>36</sup> Recently, sportsmen have participated in advertising and publicity to reduce violence against women.<sup>37</sup>

The most expansive and comprehensive education projects have occurred in the United Kingdom, where the target was not just racism in the community, but racism specifically at football matches. In England and Wales, the *Let's Kick Racism Out of Football* campaign commenced in 1993 as a joint initiative of the British government's Commission for Racial Equality and the Professional Footballers' Association, and still continues today.<sup>38</sup> It followed other smaller campaigns, often instigated by fans, but was the first in the United Kingdom to win widespread support from clubs and official bodies.<sup>39</sup> Within six months of the campaign launch, all but one of the 92 professional football clubs had publicly endorsed it and many had taken positive steps to deal with racist fans. A similar campaign was launched in Scotland in 1994.

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<sup>35</sup> The Victorian Equal Opportunity Commission has already had significant involvement with several sporting bodies (including the AFL) during the last few years.

<sup>36</sup> *Community United Against Violence Campaign* (1998–2000). This campaign was developed by the Lesbian and Gay Anti-Violence Project with funding from the Crime Prevention Division of the New South Wales Attorney-General's Department. It was supported by a range of state government bodies including the Youth Action Policy Association, Youth Advisory Council, Police Service, Department of School Education, New South Wales Health, Department for Women, Amnesty International Australia (New South Wales Branch) and the Commonwealth Human Rights and Equal Opportunity Commission.

<sup>37</sup> 'Violence Against Women — It's Against All the Rules' was a New South Wales campaign launched in December 2000. It involves the participation of male sports stars, including footballers from different codes. See further New South Wales Attorney-General's Department, Crime Prevention Division (2000) 4(3) *Violence Against Women Information Bulletin* [http://www.lawlink.nsw.gov.au/cpd.nsf/pages/VAW\\_Nov\\_2000](http://www.lawlink.nsw.gov.au/cpd.nsf/pages/VAW_Nov_2000).

<sup>38</sup> The website can be found at <http://www.open.gov.uk/cre/kickit/frontp.htm>. Although in 1997 the campaign became independent of the Commission for Racial Equality and the name changed to *Kick it Out*, the original title is still widely featured in anti-racism publicity.

<sup>39</sup> For a review of the fan-based projects, see Garland and Rowe (1996), pp 116–22.

At the heart of *Let's Kick Racism Out of Football* was the aim of getting clubs to adopt the following nine-point 'action plan'.

- 1 Issue a statement saying that the club will not tolerate racism, and spelling out the action it will take against supporters who are caught in 'indecent or racist chanting'. The statement should be printed in all match programs, and displayed permanently and prominently around the grounds.
- 2 Make public announcements condemning any racist chanting at matches, and warning supporters that the club will not hesitate to take action.
- 3 Make it a condition for season-ticket holders that they do not take part in racist chanting or any other offensive behaviour, such as throwing missiles on to the pitch.
- 4 Take action to prevent the sale or distribution of racist literature in and around the grounds on match days.
- 5 Take disciplinary action against players who shout racist abuse at players during matches.
- 6 Contact other clubs to make sure they understand the club's policy on racism.
- 7 Maké sure stewards and the police have a common strategy for removing or dealing with supporters who are breaking the law on football offences. It is dangerous or unwise to take action against offenders during the match; they should be identified and barred from all further matches.
- 8 Remove all racist graffiti from the grounds as a matter of urgency.
- 9 Adopt an equal opportunities policy in the area of employment and service provision.

The action plan (especially at points 1, 2, 3 and 7) sits alongside British legislative measures aimed directly at racist chanting during football matches.<sup>40</sup> Separate (though allied) campaigns are also based with clubs and supporters, groups in the United Kingdom and at the broader European level.<sup>41</sup>

Is such a campaign likely in Australia? It would seem not. First, the situation in the United Kingdom has been, and is, far worse than that in Australia. Abuse extends to violence on the terraces (and outside the grounds) not only in the United Kingdom but across Europe. Moreover, it occurs in a context which is politically distinct; the Australian focus is on Indigenous players, rather than loaded with the insular anti-ethnic 'nationalism' which dominates British football racism and inspires racist chanting at international games. Australian sport does not have neo-Nazi and extreme right-wing groups

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<sup>40</sup> See further, below.

<sup>41</sup> Among the most significant are 'Football Unites Racism Divides' at Sheffield United ([www.furd.org/news.html](http://www.furd.org/news.html)); Leeds United Against Racism (<http://canto.mml.cam.ac.uk/leedslist/luar.html>); Football Against Racism in Europe ([www.farenet.org](http://www.farenet.org)); and Sunderland Fans Against Racism ([www.sfar.org.uk](http://www.sfar.org.uk)). The importance of such sites was noted by the Football Task Force (1998), para 3.16.

using football games as sites for the express purpose of displaying and perpetrating racist violence.<sup>42</sup> In the wake of the 1989 Hillsborough disaster where 96 people died, a combination of criminal legislation, building safety, educational strategies and policing measures were brought in to combat violence and racism in British football. While much of the reform was aimed at hooliganism, racism was addressed by both criminal law and education. The success of the strategies will be further discussed and reviewed below.

Second, an education campaign aimed at crowd behaviour is unlikely to be a feature of Australian sports until racist abuse by spectators is recognised as a problem. However, if and when this does occur, education and publicity will almost certainly be a strategy adopted by the image-conscious AFL (and the equally image-conscious professional Rugby Union and Rugby League competitions). It would be appealing to the AFL because it would not only represent an active step to combat a problem at the grounds, but would also portray the competition and the football code as a progressive and proactive body which is seeking the development of Australian Rules football as a game in which players will not be subjected to abuse.<sup>43</sup> Such steps would particularly benefit publicity for junior development.

### **Criminalising Behaviour**

The criminalisation of racist abuse has occurred in some Australian jurisdictions since 1989, though never with any specific focus on sports events. Special legislative measures aimed at racial slurs are not, however, the only possible way in which abuse may be dealt with as a criminal matter: within the more traditional offensive language provisions of the criminal law (although untested in this context), there may also be found the basis for a strategy to combat racist abuse.

#### *Special Legislation*

In several Australian jurisdictions (but not at Commonwealth level), there exists legislation which criminalises racial vilification that occurs in a public place, though the elements of an offence are not easily satisfied.<sup>44</sup> Generally,

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<sup>42</sup> Fleming and Tomlinson (1996), pp 79–100, and especially pp 81–82; Hill (1989), p 21. On the importance of this, see Garland and Rowe (1999), pp 253–54; Bradbury (1997); Hill (1989), pp 143–44.

<sup>43</sup> Proactive steps include, for example, ‘factsheets’ available on the League’s website which discuss the valuable contribution Indigenous players have made to Australian Rules football: see note 4.

<sup>44</sup> *Discrimination Act 1991* (ACT) s 67; *Anti-Discrimination Act 1977* (NSW) s 20D; *Racial Vilification Act 1996* (SA) s 4; *Criminal Code 1913* (WA) ss 77–80; *Racial and Religious Tolerance Act 2001* (Vic) ss 24–25 (to come into effect by 1 January 2002). For a discussion of the Victorian legislation, see Government of Victoria (2000). The Commonwealth Racial Hatred Bill 1994 included both civil and criminal measures but only the former were passed by the parliament; for a discussion of the criminal proposals, see Senate Legal and Constitutional Legislation Committee (1995), pp 9–18.

there must be not just the expression of hatred but the serious incitement of racial hatred, perhaps accompanied by threats of harm.<sup>45</sup> In some states, a prosecution may require the consent of the DPP or Attorney-General.<sup>46</sup> To date there have been no criminal prosecutions in Australia. Vilification laws thus appear an unlikely vehicle for dealing with abuse at sporting events as a criminal matter. In particular, incitement would often be difficult to establish.

A more restricted model of criminal regulation has developed in the United Kingdom where football has been specifically targeted by the Parliament. Section 3 of the *Football (Offences) Act 1991* was an attempt to deal with racist chanting:

- (1) It is an offence to take part at a designated football match in chanting of an indecent or racist nature.
- (2) For this purpose
  - (a) 'chanting' means the repeated uttering of any words or sounds in concert with one or more others; and
  - (b) 'of a racist nature' means consisting of or including matter which is threatening, abusive or insulting to a person by reason of his colour, race, nationality (including citizenship) or ethnic or national origins.

Among the most distinctive features of the legislation was that, because of the requirement that a person be acting in concert, it did not render vulnerable to prosecution a spectator who on their own racially abuses a player. It is nonetheless a noteworthy Act because it represents an unequivocal intervention by the legislature to circumvent the need for an identifiable single victim (usually required by criminal laws) and thus provides a meaningful basis for prosecution of spectators who engage in racist behaviour.

The success of the *Football (Offences) Act 1991* has been by no means overwhelming, however. Parpworth noted in 1993 that only 76 of roughly 5000 football-related arrests during the course of the 1991-92 season were arrests made under the new Act.<sup>47</sup> Of these, presumably only a small portion were for racist chanting.<sup>48</sup> In 1996-97, just 10 arrests were made under s 3.<sup>49</sup> The lack of arrests seems in part due to the difficulty of identifying offenders at a crowded football match, but Parpworth also wonders whether 'more

<sup>45</sup> See note 44. Incitement is required in all jurisdictions. Threats of harm are required in the ACT, New South Wales and South Australia. In Western Australia, the legislation relates to written or pictorial material only.

<sup>46</sup> *Anti-Discrimination Act 1977* (NSW) s 20D(2); *Racial Vilification Act 1996* (SA) s 5.

<sup>47</sup> Parpworth (1993), p 1017.

<sup>48</sup> The Act also prohibits throwing objects at players or spectators (s 2) and entering the playing field (s 4).

<sup>49</sup> Football Task Force (1998), para 5(a)15.

disturbingly, it may hint at a reluctance amongst the police, for whatever reason, to actually use those powers conferred by the statute'.<sup>50</sup> This point is highlighted by Garland and Rowe when they look at the effectiveness of the legislative approaches:

What is at least as important as the provisions of the law is the will to intervene against such behaviour ... if the police or stewards are not interested in tackling racist abuse which is already illegal it seems unlikely that extending legislative powers ... will make any difference.<sup>51</sup>

While there is no question that the worst of the violence and racism at domestic football games in England has disappeared, it is not a thing of the past. The various strategies were reviewed during the 1990s and the government-appointed independent Football Task Force found that, while clubs were willing to sign up with the *Let's Kick Racism Out of Football* campaign, their commitment was not always great.<sup>52</sup> One study found the response to the campaign had been 'disappointing' outside London.<sup>53</sup> Garland and Rowe describe the initiative as being able to claim 'a measure of success'.<sup>54</sup>

In 1999, s 3 was amended so that subsection (2)(a) was not limited to acts performed in concert with one or more others, but also encompassed chanting 'whether alone or in concert'.<sup>55</sup> This amendment followed the recommendation of the review committee and the parliamentary debates indicated bipartisan support for the change.<sup>56</sup> While the provision would now seem to capture racist abuse by individuals, that abuse would still have to be the 'repeated uttering of any words or sounds' so as to constitute chanting as defined in the subsection. The amendment thus makes it easier to prosecute individuals, but does not necessarily change the nature of the offence for which a spectator can be prosecuted. It remains to be seen whether the statistics on arrest and charge alter.

For the same reasons that educational campaigns are unlikely to emerge here, Australian jurisdictions are unlikely to pass legislation such as that which exists in the United Kingdom. Notwithstanding the different contextual issues, proposals were mooted by the Australian Sports Commission in mid-1998 which would have implemented guidelines for 'harassment-free sport'. These, however, were aimed primarily at junior sport and were concerned with abuse in all its forms, defining harassment as 'offensive, belittling or threatening

<sup>50</sup> Parpworth (1993), p 1017.

<sup>51</sup> Garland and Rowe (1999), p 260.

<sup>52</sup> Football Task Force (1998), para 3.19.

<sup>53</sup> Football Task Force (1998), para 3.19.

<sup>54</sup> Garland and Rowe (1999), p 251; see also Garland and Rowe (1996), pp 114–15.

<sup>55</sup> *Football (Offences and Disorder) Act 1999* s 9(3).

<sup>56</sup> Home Office (1998) *Hansard*, House of Commons, 16 April 1999, c 470–537; *Hansard*, House of Lords, 15 July 1999, c 601–615.

behaviour' and included jokes, parody and insults.<sup>57</sup> The media reports which covered the proposals were extreme in their condemnation with regard to professional sport, and barely tolerated the ideas even with regard to junior sport. What was most interesting about the two pages of reports was that at no point were issues raised regarding racist abuse by spectators, nor were there any comparisons with or reflections upon the vilification rules in the AFL.<sup>58</sup> In October 1998, the Commission published codes of behaviour which identified 'a series of key principles on which young players, parents, coaches, teachers, administrators, officials, the media and spectators should base their sporting involvement'.<sup>59</sup>

While the current position makes specific football-related legislation unlikely, such laws could be more appealing to legislatures if proposals were to arise out of initiatives such as those between the CRE and key football stakeholders in the United Kingdom. If there were a demonstrated problem then the restricted scope and nature of such laws, combined with a coordinated approach to policing and support from fans, would possibly placate the usual concerns about restrictions on free speech and provide a platform for meaningful legislative action.

### *Offensive Language*

In the absence of specific legislation, there are in all Australian jurisdictions criminal provisions which prohibit offensive language. Typical is section 4A of the *Summary Offences Act 1988* (NSW), which makes it an offence to 'use offensive language in or near, or within hearing from, a public place or school'. 'Offensive' is not defined in the statutes but has been interpreted by the courts as meaning language which is 'calculated to wound the feelings, arouse anger or resentment or disgust or outrage in the mind of a reasonable person'.<sup>60</sup>

It is well established that the circumstances of any particular incident will impact on whether the behaviour or language is offensive.<sup>61</sup> Language or behaviour will be offensive within the meaning of the Act depending on where an incident occurs and who is likely to be there:

<sup>57</sup> 'Fans Face Abuse Ban', *Sunday Herald-Sun*, 7 June 1998.

<sup>58</sup> 'Fans Face Abuse Ban', *Sunday Herald-Sun*, 7 June 1998.

<sup>59</sup> Australian Sports Commission (1998).

<sup>60</sup> *Worcester v Smith* [1951] VLR 316 at 318; *Ball v McIntyre* (1966) 9 FLR 237 at 242-43, 244. See also *R v Smith* [1974] 2 NSWLR 586 at 588 where 'offensive' was held to have its ordinary dictionary meaning 'in the sense of giving, or of a nature to give, offence; displeasing, annoying, insulting'. There is also some Quarter Sessions authority in *Re Marland* (1963) 1 DCR 224 to suggest that the reasonable person 'must not be thin-skinned', though the case concerned a tow truck driver telling a police officer to (in the words of the judge) 'mind his own business' and does not seem to offer any basis for suggesting that the target of a racist slur must not be thin-skinned.

<sup>61</sup> *Saunders v Herold* (1991) 105 FLR 1 at 5-8; *Spence v Loguch* (1990) 9 Petty Sess Rev 4404 at 4409-11.

What constitutes behaving in an offensive manner depends very much on the circumstances. Conduct and language engaged in at a football match ... may be acceptable, or at least unremarkable, but offensive if engaged in during a church service or a formal social event.<sup>62</sup>

Swearing, for instance, is less likely to be offensive at a football ground than some other places. It has also been stated that the reasonable person is 'reasonably contemporary in his reactions' — thus, as those standards have become more liberal over the last few decades, swearing has in many contexts become less likely to be viewed as offensive.<sup>63</sup>

The combined effect of these two factors — circumstances and contemporary standards — is generally that some words and behaviour are likely to be less offensive today than they have been in the past. The more interesting question here is the converse of this proposition: might a racist slur at a football game today be *more* offensive under the law than it has been in the past?

The question of whether a racist slur by a spectator could constitute offensive language was explored in 1978 by Greg Lyons, who asked whether it could be a crime to scream at umpire Glenn James that he is a 'useless fucking boong'.<sup>64</sup> Lyons notes that 'while the word "boong" is both "abusive and insulting" to Aborigines, and offensive to many whites, our courts have not traditionally concerned themselves with racially offensive language'.<sup>65</sup> He argued that, although it would be difficult to envisage an arrest by police at a football game and that a complaint would provoke negative (racist) public opinion, there was still a good case to suggest that courts would find an offence proved because it would satisfy the legal standard for offensiveness.<sup>66</sup>

It is probably even more likely in 2001 that a court would consider racist abuse to be offensive. Although 'fuck' is perhaps no more likely to be offensive in the circumstances of a football match than it was two decades ago, the racist taunt might well be more widely viewed as offensive than it was in the mid-1970s. Given that the application of standards can change depending

<sup>62</sup> *Saunders v Herold* (1991) 105 FLR 1 at 5.

<sup>63</sup> On this aspect of the reasonable person, see *Ball v McIntyre* (1966) 9 FLR 237 at 245; *Connors v Craigie* (1993) 1 NSW Courts Rev 69 at 70.

<sup>64</sup> Lyons (1978), p 106.

<sup>65</sup> Lyons (1978), p 106. See also Cranston (1973), p 75. It is noteworthy, as Lyons and Cranston both point out, that the expression 'fucking boong' was considered on appeal by the Full Court of the Supreme Court of Queensland in *Bradbury v Staines* [1970] QdR 76 and by the High Court (refusing an application for special leave) at 90–91 of that report. Argument in every instance turned on whether 'fuck' was obscene; there was no discussion whatsoever about whether 'boong' was problematic in any way at all, though this was perhaps not strictly required given the statute concerned obscenity rather than offensiveness. Subsequent consideration of the case has been concerned only with obscenity issues: *Romeyko v Samuels* (1972) 19 FLR 322; *Carpenter v Halstead* [1973] QdR 35; *Cullen v Meckelenberg* [1977] WAR 1.

<sup>66</sup> Lyons (1978), p 106.

on the circumstances and what the reasonable person in the community would view as offensive, it could even be argued that a taunt of 'boong' or 'black cunt'; or 'black bastard' is more likely to be offensive when uttered at a professional football match than in any number of other places. Arguably, the culture of anti-racism which is advocated by the AFL rules forms a part of the circumstances and context in which abuse occurs. It does not seem at all far-fetched to suggest that racist abuse could 'arouse anger or resentment or disgust or outrage in the mind of a reasonable person' and — especially if the reasonable person is to include the reasonable Indigenous person — that it would wound one's feelings. In short, racial slurs are possibly more likely to be offensive at the football than at other public places because there is already an established move to stamp out racism on the football field which has moved beyond legislative attempts to combat vilification in the community more generally.<sup>67</sup> Alternatively, it could be argued by a defendant that the AFL has no intention of extending anti-racist policies off the field and that, given the League's awareness of Indigenous issues but its virtual inaction with respect to spectator abuse, the better interpretation of the circumstances should be that racist abuse is not offensive when one is a football spectator.

If an offence could technically be made out, there would still be the problems of enforcement which accompany any arrest at a football match and the possible reluctance of police to act upon racist abuse.<sup>68</sup> However, arrest is not an impossibility. Sydney Swans coach Rodney Eade was cautioned by Western Australian police after a game when he repeatedly screamed the words 'fuck' and 'cunt' — 22 times and four times respectively in a six-minute period during the first quarter, and over 200 times in the course of the game — while addressing his players within earshot of spectators.<sup>69</sup> It is not dissimilar to the frequency and type of racist abuse Greg Lyons witnessed from spectators in 1978 while police officers stood by and did nothing. Without an accompanying campaign to stamp out racist abuse for good, and collaboration between police and the League as has happened in the United Kingdom, it would seem difficult to make offensive language an enforceable offence where racist abuse is concerned.<sup>70</sup>

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<sup>67</sup> For a comparison of the AFL and legislative approaches, see McNamara (2000), pp 22–24.

<sup>68</sup> For an excellent review of the authorities on offensiveness and a discussion of policing, see the judgment of Magistrate David Heilpern in *Police v Dunn* reported in (1999) 24 *Alternative Law Journal* 238 and the note preceding the report: Wilmshurst (1999). On the issue of police engaging in racist behaviour towards Aborigines, see the *NIRV Report* (1991), pp 79–114. For an excellent discussion of policing racism at English football games, including some consideration of the role of private security, see Garland and Rowe (1999).

<sup>69</sup> When asked why Eade was only warned and not charged, Inspector William Todd said that he did not want to be accused of harming the Swans' performance. Ironically, the police officer used the word 'shit' at least twice to reporters: 'Coach Regrets Language Shocker', *Sunday Age*, 13 July 1997.

<sup>70</sup> Compare this with the *Sydney Cricket and Sports Ground Act 1978* (NSW) s 24A (inserted in 1997), which prohibits spectators from, and punishes spectators for,



There remains the question of whether offensive language and associated offences are an appropriate way to deal with racist abuse. There are concerns about the very existence of such offences; their use against Aboriginal people is well documented and they have been a highly discretionary tool in policing which has resulted in the arrest, charging, conviction and incarceration of Indigenous people for trivial matters.<sup>71</sup> It would seem unwise to proceed down this path without great caution.

### Civil Actions

Racial vilification laws can provide civil redress for an aggrieved party who is the target of racial hatred.<sup>72</sup> Under the various state legislative regimes, although the threshold is lower than that for criminal offences, a complainant would have to establish incitement to hatred.<sup>73</sup> Under the Commonwealth laws, an action is more easily established: an act will be unlawful if it is 'reasonably likely in all the circumstances to offend, insult, humiliate or intimidate another person ... and this act is done because of the race, colour or national or ethnic origin of the other person'.<sup>74</sup> For a footballer, however, civil vilification laws are unlikely to be of great assistance because they will rarely be in a practical position to identify and locate their abuser. In addition, where players want to combat racist abuse more widely, they would have a greater chance of success by commencing some form of action against the organising body of their competition.

In these circumstances, the most effective cause of action lies in racial discrimination laws where the defendant is the League or the club as the player's employer. Such actions have been commenced in the United States as civil rights actions. While there have been no such proceedings in Australia, our discrimination laws would seem to hold similar possibilities.

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entering the field of play at the Sydney Cricket Ground. The idea of the stalker as a 'larrikin' is long gone: those who trespass on the SCG playing field are liable to fines of up to \$5500. The identification of the offender is, of course, easy in these cases, but it nonetheless represents a noteworthy shift in the treatment of spectators.

<sup>71</sup> *NIRV Report* (1991), pp 89-94; *Police v Dunn* (1999) reported in *24 Alternative Law Journal* 238.

<sup>72</sup> *Discrimination Act 1991* (ACT) s 66; *Anti-Discrimination Act 1977* (NSW) s 20C; *Wrongs Act 1936* (SA) s 37; *Racial and Religious Tolerance Act 2001* (Vic), ss 7-8 (to come into effect by 1 January 2002); *Racial Discrimination Act 1975* (Cth) s 18C. In each of these Acts there are defences which protect speech made in good faith and with some basis in the public interest, though these would not be relevant to spectator abuse. For proposed Victorian provisions see *Racial & Religious Tolerance Legislation: A Discussion Paper and a Model Bill* (2000).

<sup>73</sup> Incitement is discussed in *Patten v State of NSW* (NSW Equal Opportunity Tribunal, unreported, 21 January 1997); see especially the minority decision of Mr McDonald.

<sup>74</sup> *Racial Discrimination Act 1975* (Cth) s 18C.

*The US Action: Cox v National Football League*<sup>75</sup>

Under s 2000e-2(a)(1) of Title VII of the United States *Civil Rights Act* of 1964, an employee has an action against an employer where there is a racially hostile work environment. This will be established if the 'work environment [is] so pervaded by racial harassment as to alter the terms and conditions of his employment'.<sup>76</sup> This was the basis for an action by African-American footballer Bryan Cox against the National Football League (NFL).<sup>77</sup>

Playing for the Miami Dolphins in September 1993, Cox was racially abused by opposition Buffalo supporters for 90 minutes during the warm-up period and then throughout the game itself. Cox claimed that he had been the target of:

an intense barrage of verbal abuse, much of which was based on race. Shouts of 'nigger', 'monkey', 'we will kill you', and a string of racially-based obscenities were heard by several witnesses. One fan had rigged up a dummy with Bryan's number and the words 'wanted Dead' on it, and then hung the dummy on a noose.<sup>78</sup>

In response, Cox made two 'obscene gestures' to the opposition supporters. The NFL fined Cox \$10,000 for misconduct.<sup>79</sup> Cox responded to the League by commencing action under Title VII arguing that he had been subjected to a racially hostile environment. The NFL then reduced Cox's fine to \$3000 with a statement that 'some of the fan conduct in question was racially offensive and unacceptable, but Bryan's response was inappropriate'.<sup>80</sup> Cox continued with his employment discrimination action, though the day after the writ was filed the NFL settled the case by 'distributing revised guidelines requiring, among other things, that teams remove from the stadiums fans who take part in "racial taunts"'.<sup>81</sup>

The *Cox* case is indicative first of the potential success of an action and, second, of how proceedings can prompt a sporting organisation to take positive steps to deal with racist abuse. The prospect of a similar action succeeding in Australia is by no means out of the question. Even if an action were to settle, part of that settlement might be the institution of procedures to prevent the

<sup>75</sup> *Cox v National Football League* 889 F Supp 118 (1995).

<sup>76</sup> *Burlington Industries Inc v Ellerth* 524 US 742 (1998), per Thomas J, joined by Scalia J (dissenting) citing *Snell v Suffolk Cty* 782 F 2d 1094 at 1103. See also *Rogers v EEOC* 454 F.2d 234 (1971), cert. denied, 406 US 957 (1972).

<sup>77</sup> For a discussion of this case and associated issues, see Williams (1996).

<sup>78</sup> *Cox v National Football League* 889 F Supp 118 (1995) at 119.

<sup>79</sup> The fine was imposed against the background of two earlier fines relating to separate occasions when he kicked another player in the head and abused officials: *Cox v National Football League* 889 F Supp 118 (1995) at 119.

<sup>80</sup> *Cox v National Football League* 889 F Supp 118 (1995) at 119.

<sup>81</sup> *Cox v National Football League* 889 F Supp 118 (1995) at 119.

situation occurring in the future. Indeed, this — rather than compensation — appears to be the drive behind various player complaints in the AFL.<sup>82</sup>

### *Racial Discrimination Laws in Australia*

Australian discrimination laws provide scope for a similar action. Section 9 of the *Racial Discrimination Act 1975* (Cth) prohibits discrimination which includes 'impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms, in the political, economic, social, cultural or any field of public life'. A useful starting point for examining the possibility of an action is the decision in *Tamanivalu v Western Australian Rugby Union Inc.*<sup>83</sup>

In this case, the complainant was abused by an opposition player. He retaliated, striking the other team member, and the Union Judiciary suspended Mr Tamanivalu for two seasons.<sup>84</sup> Tamanivalu then lodged a discrimination complaint against the Western Australian Rugby Union (WARU) on the basis that, among other grounds, the Union had failed to protect him from racial taunts by other players. Sir Ronald Wilson found that it would be a breach of s 9 of the Act if there had been 'a particular problem with racist abuse' and the Union did nothing about it.<sup>85</sup> On the facts of the case, however, it was held that there was no breach. The reasoning is particularly important — and particularly flawed — because it illustrates the problems which could well face a complainant arguing that he has not been protected from racist abuse by spectators.

Wilson's reasoning in *Tamanivalu* turned on the question of whether racist abuse had been a problem. The answer was viewed from the point of view of the WARU:

Several witness called in the course of this hearing stated that, to a greater or lesser degree, there had been a history of racist taunts in games conducted under the auspices of the WARU. However, I find that racist abuse had never been considered to be a major or even significant problem by or within the WARU or its affiliated clubs prior to the incidents the subject of this complaint.<sup>86</sup>

<sup>82</sup> McNamara (2000), pp 14–17.

<sup>83</sup> Human Rights and Equal Opportunity Commission, unreported, 17 August 1994. For a detailed analysis and critique of this decision, see McNamara (1998).

<sup>84</sup> This was later reduced to eight games, with the remaining 18 games to be served as a suspended sentence.

<sup>85</sup> *Tamanivalu v Western Australia Rugby Union Inc* (Human Rights and Equal Opportunity Commission, unreported, 17 August 1994) at [22-3]

<sup>86</sup> *Tamanivalu v Western Australia Rugby Union* at [23]. A similar conclusion could have been drawn regarding AFL games prior to Michael Long speaking out in 1995; the determination simply does not take account of whether there are reasons why players did not speak out.

Because the WARU had not *considered* racist abuse to be a problem, Wilson accepted that racist abuse was not, *in fact*, a problem.

If this reasoning were applied to a discrimination action by an AFL player regarding racist abuse from crowds, then the complainant would face an even more difficult hurdle. In the last six years, clubs' support for Aboriginal players who lodge vilification complaints has been very strong. There is an AFL liaison officer for Indigenous players. On this basis, the AFL would have an argument — and a much better argument than the WARU — to suggest that racist abuse by spectators was not, in fact, a problem. This points, I would suggest, not necessarily to the absence of racist abuse as a problem, but to the need for research into the extent to which racist abuse occurs in Australian football crowds. In addition, questions need to be asked about whether and why players may not identify it as a significant problem (just as such questions should have been asked in *Tamanivalu's case*).

While there is uncertainty about how a civil case would be resolved, the possibility of such an action needs to be seriously considered. Civil actions are especially relevant given that there appears to be an ever-increasing and quite appropriate position taken by players that the football field is their workplace.<sup>87</sup> This was one reason why players proceeded with complaints about on-field racist abuse from opponents; the sentiment was exemplified by one Indigenous AFL player who noted that 'if you said that about me in any other workplace, you'd be out of a job'.<sup>88</sup>

### Responding with Violence

Thus far, this paper has examined various ways in which spectator abuse may be addressed. Both legal and non-legal approaches are possible, with some strategies proactive and others reactive. It is clear that the options for individual players are limited. Civil actions for vilification are largely impractical. Arrest and charge are unlikely in the absence of a League campaign to prevent racist abuse. Such a campaign is itself unlikely without an incident to prompt the League to action, or at least without further research.

More likely would be either a discrimination action (or at least the express threat of an action accompanied by publicity), or an immediate and possibly violent reaction by a player to a spectator who has abused him. The latter situation raises further problems still — a player certainly runs the risk of both disciplinary action from the League and even criminal charges if an assault occurs. However, the possibility of such an incident is by no means out of the question and has occurred from time to time in response to non-racist abuse.<sup>89</sup> The most recent incident occurred in 2000 when well-respected and

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<sup>87</sup> For example, this has long been evident in restraint-of-trade litigation: *Buckley v Tutty* (1971) 125 CLR 353; *Hawthorn Football Club v Harding* [1988] VR 49; *Buckenara v Hawthorn Football Club* [1988] VR 89. More recently, there has been a move to secure long-service leave for players: 'Unions Back Footy Leave Claim', *The Age*, 27 December 2000.

<sup>88</sup> McNamara (2000), p 14.

<sup>89</sup> Lyon (2000).

long-standing AFL coach David Parkin punched a spectator who abused him after a game. Overseas, player reaction to racist taunts has resulted in disciplinary action.<sup>90</sup>

In the United Kingdom, Eric Cantona — a Frenchman playing at the time for Manchester United — kicked a spectator who had abused him as he left the field after being sent off. It gradually emerged in the press that the 'victim', Matthew Simmons, had links to neo-Fascist groups and that his provocative statement was not (as he claimed) 'Off you go Cantona — it's an early shower for you', but words to the effect of 'You French bastard. Fuck off back to France, you mother-fucker'.<sup>91</sup> Tempering the widespread criticism of Cantona, one commentator was prompted to write:

You didn't have to look very long and hard at Mr Matthew Simmons to conclude that Eric Cantona's only mistake was to stop hitting him. The more we discovered about Mr Simmons, the more Cantona's assault looked like the instinctive expression of a flawless moral judgment.<sup>92</sup>

Cantona was charged and convicted of assault and banned by the League from playing for nine months.<sup>93</sup>

The NFL's response to Bryan Cox was similar. It was Cox's reactions which the League saw as a problem. In the negotiations for settlement, the NFL reduced Cox's penalty but argued that Cox provoked the fans with pre-game comments and that it was 'ultimately the responsibility of professionals to maintain self-control in difficult and hostile circumstances'.<sup>94</sup> Williams provides a short history and analysis of how sporting bodies use 'professionalism' against players and thus abdicate responsibility for the circumstances in which transgressions take place. Were an incident of violence or a similar response to occur in the AFL, it would bring the issue to a head because the League — without any policy or view on racist abuse by

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<sup>90</sup> Lyon (2000).

<sup>91</sup> Greenfield and Osborn (1996), p 317–18.

<sup>92</sup> 'A Martyr to His Own Myth', *Independent* 29 Jan 1995, cited in Greenfield and Osborn (1996), p 319.

<sup>93</sup> Matthew Simmons was not forgotten: his address was printed on t-shirts before the Manchester United away game near his house and he apparently went into hiding: Greenfield and Osborn (1996), pp 318–19, 333 (n 58). See also Fleming and Tomlinson (1996), pp 81–82 and Gardiner (1998), pp 249–64. For a comprehensive coverage of Cantona, see Ridley (1997). Stephen Bradbury (1997) notes an incident in the 1930s when Everton player Dixie Dean punched a spectator who racially abused him but no action was taken against him at all. It was said that a police officer who witnessed it informed the spectator that he 'deserved' it.

<sup>94</sup> Cited in Williams (1996), p 311. Cox's pre-match comments to the media were: 'I don't like the Buffalo Bills as a team ... I don't like the city ... I wouldn't care if any of those people fell off the face of the Earth ... Don't ask me to name the guys I hate. You can name them all.' *Cox v National Football League* 889 F Supp 118 (1995) at 119.

spectators — would most likely discipline the player involved. Subsequently, the issue would almost certainly be addressed by the League more carefully, with policies or rules quickly established.

Along with professionalism goes the question of character: Hill argues that the black player who responds to racist abuse is viewed by white teammates and spectators as a lesser being for doing so — as having a chip on his shoulder. He describes scathingly the experience of black players in English football:

Such is the code of professional football. Eat shit, it's part of the job ... And your capacity to eat shit is one criterion by which most football people make their value judgments regarding who does or does not have that quality upon which English football likes to pride itself — 'character' ... Consider the politics of the field of play. Rule One: don't retaliate when opponents bait you. The ref will send off you, not the other guy. Rule Two: don't lose your rag when they shower you in spit as you back away to take a corner kick, when they goad you with monkey chants and throw bananas on the pitch just to let you know they think you are no better than an ape. Rule Three: don't get upset when your team-mates behave in exactly the same way. Break any of these rules, and they say you've got a temperament problem.<sup>95</sup>

It is these contextual issues which make Nicky Winmar's response to racist abuse so superb, and yet in some ways fruitless. Winmar's act of lifting his jumper and pointing to his skin was quite singular, symbolically powerful and professionally beyond reproach. It was a statement about power and about pride. There was no doubt about the legitimacy of his reaction, nor about its appropriateness. By virtue of all this, Winmar was immunised from the criticism that could otherwise have attached to a response to spectator abuse and he simultaneously highlighted the issue.<sup>96</sup> But the problem remained that nothing was done by the League. Even when confronted with a remarkable and virulent instance of spectator abuse there was no investigation about whether it was a problem or how it might be addressed. It will be a shame if it takes an incident of violence to prompt some action by the AFL or similar sporting bodies.

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<sup>95</sup> Hill (1989), pp 92–93.

<sup>96</sup> Fleming and Tomlinson go through a range of English players' responses to abuse: (1996), p 87. Although these include ignoring it or making light of it, it is Hill's interview with former player and Professional Footballers' Association representative Brendan Batson that is instructive: 'We *are* conscious of it. Because if any person is going to be subjected to ninety minutes of abuse, you'd have to have a hide thicker than a rhinoceros to say it didn't affect you ... But what do you do? Do you react to it, then maybe throw your game completely, and then be subjected to more of it? You've literally got to grin and bear it. And I think that is one of the problems in itself. If you grin and bear it, everyone thinks, "Oh, well, you're accepting it.'" But I can assure you that black players *don't* accept it.': Hill (1989), pp 36–37. (Fleming and Tomlinson also quote from the Batson interview.)

## Conclusion

Football has a responsibility to confront prejudice and intolerance wherever it appears, but tackling racism also represents an opportunity for the game to make a positive contribution to national life. Football ... is a powerful vehicle to take a message of tolerance and respect to society as a whole.<sup>97</sup>

At present, there are no programs in the AFL or other professional football competitions in this country to deal with racist abuse by spectators. This does not mean that strategies are not needed, nor that they might not be beneficial, especially with regard to promoting anti-racism in lower profile sporting competitions and having some impact on behaviour and attitudes in the community at large.

This paper has examined some possible approaches to combating racist abuse by spectators, but it presently seems unlikely that any of these strategies will be adopted in Australian sport because there is no perception that they are needed. It has been argued that this perception needs to be subjected to careful scrutiny and that research is needed to identify the nature and extent of the problem. Currently, there is simply not enough information about racist abuse by spectators and there is no meaningful avenue of redress for players who are subjected to it.

Without further investigation, it seems inevitable that there will at some point be an incident of abuse where a player responds in a manner that requires attention from the League. That response could be physical retaliation against a spectator. It could be speaking out publicly to the media, as Michael Long did about on-field abuse. Or it could be the instigation of civil discrimination or vilification proceedings. Any of these would, in turn, compel the League to take some form of action. The AFL has proved in recent years to be very receptive to Indigenous players' concerns, as well as to public and media reaction. It would be consistent with this pattern if the League responded with an education campaign in partnership with a government agency, perhaps accompanied by stronger policing or enforcement of existing laws to demonstrate that the AFL, federal and state governments and the community are serious about combating the traditions of racism that have characterised Australian sport.

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