

Paying for Professionalism: Industrial Relations in Australian Rugby Union

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Rugby union in Australia, since the advent of professionalism in 1995, has found itself adopting a collectivist model of industrial relations. That is, wages and employment conditions have been determined by collective bargaining between the various Australian sport unions (the employers) and the Rugby Union Players' Association. Two collective bargaining agreements have been negotiated in Australian rugby union. This review examines the rise of player associations in professional team sports, both in Australia and overseas, the peculiar circumstances which combined to produce Australian rugby union's collectivist model, and the contents of the two collective bargaining agreements.

On August 16, 1995 a momentous event occurred in the annals of Australian rugby union. On that day, Ian Ferrier, on behalf of the Australian Rugby Union (ARU) and the three "state" unions of New South Wales, Queensland and the Australian Capital Territory, signed a letter. The unions agreed to recognise a yet-to-be-formed players' association, \$10,000 would be lent to the association to aid it in its establishment, two members of the players' association would be appointed to each of the unions' respective boards, and 95% of Australia's share of Rupert Murdoch's News Corporation's television deal for two new competitions, the first involving regional and the second national teams from South Africa, New Zealand and Australia—the Super 12 and Tri-Nations—would be distributed "in accordance with the Players' Association direction" (I. Ferrier, personal communication, August 16, 1995). Murdoch's television deal was worth US\$555 million over 10 years, beginning in 1996, with an option for a further five years. The unions' offer was provided

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in consideration of a majority of players severing their relationship with a rival organisation known as the World Rugby Corporation (WRC).

There are two elements associated with the “momentous” nature of this letter (a letter of engagement). First, and of lesser importance, rugby union was an amateur code. The ARU and its state satellites were offering players substantial sums of money for, at least, the next decade (see Tables 2 and 3 for details of the incomes players subsequently received). This issue, if it really was one in 1995, was resolved on August 27, 1995 when the International Rugby Football Board (IRB), in a meeting in Paris, abolished amateurism. The second, and more significant aspect of Ian Ferrier’s letter, is that a group of employers—the respective unions—agreed to recognise and afford a power of “direction” over “substantial” sources of revenue to a players’ association, before such a body had even been formed.

The players decided to sign, or stay with, the “establishment” ARU. The WRC disintegrated. Once the dust of the latter’s disintegration had settled, the now-formed Rugby Union Players’ Association (RUPA) experienced difficulties in enforcing its power of “direction”, per the Ferrier letter. In late 1996 RUPA initiated action before the Supreme Court of New South Wales to enforce the undertakings it believed were contained in the August 16, 1995 letter. At the time of this challenge the unions broached the idea of negotiating a collective bargaining agreement (CBA). RUPA experienced success in its legal action on a preliminary matter involving the security of costs (*The Rugby Union Players Association v. Australian Rugby Union*, 1997). Following this the unions and RUPA eventually signed off on a comprehensive collective bargaining agreement in October 1997. In mid-2000 negotiations commenced over a second agreement (with the author being a member of RUPA’s bargaining team). Nine months later, in April 2001, an agreement was finalised.

Both of these collective bargaining agreements are based on the principle of revenue sharing. These deals, or collective bargaining, in Australian rugby union involve a process whereby administrators and players act cooperatively in seeking to maximise revenue flowing into the sport. To paraphrase Lima, Kahane, and Maxwell (2000), Australian rugby union provides an example where cooperation between administrators and players increases the pay-off for both.

An account of the major events and machinations associated with industrial relations in Australian rugby union since 1995 is provided here, drawing on earlier work of the author (Dabscheck, 1998). This review is organised into four sections. It begins with a brief examination of the extent to which players, from a variety of sports across the globe, have formed player associations in seeking to defend and enhance their employment rights. Special emphasis is placed on developments within Australia. Next, the major events which occurred in Australian rugby union from 1995 to 1997, namely the “rugby war”, the Ferrier letter and RUPA’s action

before the Supreme Court of New South Wales, are examined. The major features of the two collective bargaining agreements are then presented. The final section draws together the major threads of the discussion.

Player Associations: Overseas and in Australia

Scoville (1974) has observed that “player associations are almost as old as professional team sports” (p. 206). The earliest known players’ association was the National Brotherhood of Professional Baseball Players, formed in the United States in 1885. It disintegrated in 1890 after an unsuccessful attempt by players to form their own league. There have been four other failed attempts to form player bodies in North American baseball—the Protective Association (1900–1902), the Fraternity (1912–1918), the National Association (1922) and the Baseball Guild (1946). In 1954 the Major League Baseball Players’ Association (MLBPA) was formed as a company “tamecat” union. In 1966 the players appointed former Steel Union official, Marvin Miller, as their leader. Under his leadership, and that of current incumbent, Don Fehr, appointed in the mid-1980s, the MLBPA transformed itself into an aggressive and successful organisation (Burk, 1994, 2001; Dworkin, 1981; Korr, 2002; Lowenfish, 1991). At the risk of making a controversial statement, the MLBPA may, in fact, be the most successful trade union that has ever existed. In 1965, prior to Miller’s appointment, the average income of players was US\$19,000 (Miller, 1991). In 2002 it was US\$2.38 million (Major League Baseball, 2002).

In the 1950s and 1960s player associations were also formed in other North American sports such as basketball, (ice) hockey, American football and Canadian football (Alyluia, 1973; Staudohar, 1996). In 1998 female basketball players formed a players’ association (Christensen, Guttman, & Pfister, 2001). The oldest continuous players’ association in professional team sports is English soccer’s Professional Footballers’ Association, formed in 1907 (Dabscheck, 1979a, 1986; Harding, 1991). There are currently 40 soccer player associations operating in all continents, the majority being European (FIFPro, 2003). In 1967 English cricketers formed the Cricketers’ Association (Sissons, 1988). Players in other parts of the cricketing world have also formed player organisations (see below). The players of Northern Union, or what is more commonly known as rugby league, attempted to form a players’ association in England in the years immediately before and after World War I (Dabscheck, 1979b). In 1981 English players formed the Rugby League Professional Players’ Association (Macklin, 1984). Player associations have been formed by baseball players in the Dominican Republic (Klein, 1991), Japan (Whiting, 1990) and Taiwan (Reaves, 2002). South Korean baseballers have also attempted to form such an association (S.H. Kwon, personal communication, October 9, 2002).

Table 1 sets out the attempts by Australian players to form player associations. It is divided into three categories. The first concerns failed attempts of organisation. These essentially involve reports of a call, by one or several people, of the need for players in a particular sport to form a players' association. This, in turn, is followed by an inability to garner enough support to establish the said association. There have been 21 such failed attempts, stretching back as far as the 1910s and 1920s. The second category lists those situations where a players' association has been established—at a minimum there have been meetings—experienced difficulties which it was unable to overcome, and then ceased to operate. There have been 11 examples of formation, then failure. The third category involves player associations that currently exist, with RUPA being one of seven such examples. Of the seven, only four are active or successful, with success being defined as having a current collective bargaining agreement. Besides RUPA, the successful organisations are the Australian Football League Players' Association, the Australian Professional Footballers' Association and the Australian Cricketers' Association. Both the Rugby League Players' Association and the National Basketball League Players' Association have been relatively inactive in recent years. The (revamped) Australian Netball Players' Association, an association of female players, has only recently been formed.

Table 1: Attempts to Form Player Associations in Australian Professional Team Sports

Failed Attempts at Formation

1	1913	Australian Rules Football (Victoria)
2	1921–22	Rugby League (New South Wales)
3	1927	Rugby League (New South Wales)
4	1931	Australian Rules Football (Victoria)
5	1944	Australian Rules Football (Victoria)
6	1952–53	Rugby League (New South Wales)
7	1959	Soccer (New South Wales)
8	1960	Australian Rules Football (Victoria and South Australia)
9	1960	Rugby League (New South Wales)
10	1963	Soccer (Queensland)
11	1973	Australian Rules Football (South Australia)
12	1974	Rugby League (New South Wales)
13	1978	Rugby League (Queensland)
14	1985	Soccer in State League (Victoria) and National Soccer League

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| 15 | 1988 | Players, umpires and trainers in Australian Rules Football (Western Australia) |
| 16 | 1989 | National Soccer League |
| 17 | 1989–90 | Australian Rules Football (South Australia) |
| 18 | 1991 | Women’s National Basketball League |
| 19 | 1993 | Australian Rules Football (New South Wales) |
| 20 | 1994 | Australian Test and Shield Cricketers |
| 21 | 1997 | Australian Baseball League |

Formation, then Failure

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| 1 | 1914 | Victorian Footballers’ Council (Australian Rules Football) |
| 2 | 1955–56 | Australian Football Players’ Union (Australian Rules Football, Victoria) |
| 3 | 1960 | South Australian Soccer Players’ Association |
| 4 | 1964–65 | Victorian Soccer Players’ Association |
| 5 | 1965–66 | New South Wales Soccer Players’ Association |
| 6 | 1976–late
1980s | Soccer Players’ Association (Western Australia) |
| 7 | 1977–82 | Professional Cricketers’ Association of Australia |
| 8 | 1979–86 | Western Australian Football League Players’ Association (Australian Rules Football) |
| 9 | 1990–92 | (Revived) Western Australian Football League Players’ Association |
| 10 | 1994–96 | Australian Baseball Players’ Association |
| 11 | 1997–2000 | Australian Netball Players’ Association |

Still in Existence

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|---|------|---|
| 1 | 1973 | Australian Football League Players’ Association (Australian Rules Football) |
| 2 | 1979 | Rugby League Players’ Association |
| 3 | 1989 | National Basketball League Players’ Association |
| 4 | 1993 | Australian Professional Footballers’ Association (Soccer) |
| 5 | 1995 | Rugby Union Players’ Association |
| 6 | 1995 | Australian Cricketers’ Association |
| 7 | 2002 | Australian Netball Players’ Association |

Source: Dabscheck (1996, 2001)

An interesting phenomenon associated with player associations has been the formation and/or increased role of player association confederations. Representatives of French, Scottish, English, Italian and Dutch soccer players' associations in Paris in December 1965 formed the International Federation of Professional Footballers' Associations (FIFPro). As mentioned above, FIFPro has 40 affiliates and came into prominence over negotiations concerning new employment rules introduced by the Federation Internationale de Football Association (FIFA) in 2001 (Dabscheck, 2003). The Federation of International Cricketers' Associations (FICA) was formed in 1998. It has seven members—Australia, New Zealand, West Indies, Sri Lanka, England, Zimbabwe and South Africa (Australian Cricketers' Association, 2003). Finally, in 2001 the International Rugby Players' Association (IRPA) was formed. It has five affiliates—Australia, England, South Africa, New Zealand and France. IRPA is in the process of attempting to establish a “bargaining” relationship with the IRB (T. Dempsey, personal communication, October 16, 2002).

The Rugby War and the Ferrier Letter

Developments in rugby league have been the catalyst for various changes which have occurred, especially in Australian rugby union, since 1995 (FitzSimons, 1996). In early 1995 Rupert Murdoch's News Corporation announced its intention to establish a new competition, to be known as Super League, as a rival (in the Australasian market) to the existing Australian Rugby League (Arthurson, 1997; Colman, 1996; Masters, 1997; McCracken, 1996; *News Limited v. Australian Rugby Football League*, 1996a, 1996b). At that time, the broadcasting rights to rugby league were held by the Nine Network, owned by Kerry Packer of 1970s World Series Cricket fame (see Haigh, 1993). An intense bidding war between the two leagues and media moguls for clubs, players and coaches erupted. There were fears within rugby union circles that many of its leading players—players who were supposedly amateurs—would be enticed to join rugby league.

At the time of the Rugby World Cup in South Africa in June 1995, the unions of South Africa, New Zealand and Australia announced the formation of a consortium, which had negotiated a 10-year agreement, with a five-year option, with News Corporation for US\$555 million. The deal involved the creation of two new competitions. The first would be a Super 12 competition between regional teams—five from New Zealand, four from South Africa and three from Australia. Teams would play each other only once, with the top four teams qualifying for a final series. Following the completion of this competition, the best players would be chosen to represent their respective countries in a Tri-Nations series, played on a home-and-away basis.

The new consortium had not informed players of these developments and, significantly, had not signed them to contracts. After all, the players were amateurs. At approximately the same time, the WRC entered the market for players, offering them “generous” contracts, similar to those on offer in rugby league following the Super League war. In Australia, the ARU and WRC entered into a battle for the hearts and minds—and signatures—of players. While individual players may have waxed or waned, signed with one organisation in preference to the other (or with both), they made a crucial decision which was to have a lasting impact on Australian rugby union. They decided to act *collectively*. On August 10, 1995, 70 players attended a six-hour meeting held at the Park Royal Hotel, Darling Harbour, Sydney, to consider which of the rival organisations they should join. They formed a committee to determine their best course of action. The committee comprised Mark Harthill, George Gregan, Matthew O’Connor, John Eales, Tony Dempsey and Tomo Boston. In time, Tony Dempsey, a solicitor by profession, emerged as the players’ “natural” leader.

Dempsey and Harthill entered into negotiations with Phil Harry, president of the ARU, and Ian Ferrier, member of the ARU board and chairman of the New South Wales Rugby Union. In due course these negotiations produced the Ferrier letter of August 16, 1995, which granted recognition of a yet-to-be-formed players’ association, and provided that association with a power of “direction” of 95% of News Corporation’s broadcasting revenue (see above). The decision by Australian players, and those of other nations, to stay with their “establishment” unions resulted in the demise of the WRC.

After the signing of the Ferrier letter and, more importantly, the associated departure of the WRC, RUPA experienced problems in enforcing its power of “direction”. For more than a year there was a series of meetings, and a raft of letters, some of which were quite heated, mainly between RUPA’s Tony Dempsey and the ARU’s John O’Neill. The latter had been appointed ARU’s managing director and chief executive officer in October 1995. In a letter to Dempsey, on July 15, 1996, O’Neill wrote that RUPA’s “alleged rights ... were exercised and exhausted once and for all by the direction or requirement that 95% of the net television proceeds be applied in funding the contract payments to contracted players ... there is no further scope for the Players’ Association to give directions”. O’Neil added, “We do not intend to entertain any further purported directions as to the matter from the Players’ Association ... for completeness ... as far as the ARU is concerned all the other clauses of the [Ferrier letter] have been complied with and are now exhausted” (J. O’Neill, personal communication, July 15, 1996).

In September 1996 RUPA communicated its “direction” for the distribution of broadcasting revenue for the 1997 season. It stipulated that \$141,000 be allocated to RUPA to perform its representative and administrative functions. The unions were given 14 days to respond (T. Dempsey, personal communication,

September 16, 1996). They duly informed RUPA that it already knew the unions' views on the "direction" issue (J. O'Neill, personal communication, September 30, 1996; S. Thornton, personal communication, October 4, 1996; J. Winstanley, personal communication, September 20, 1996). In an earlier letter to Tony Dempsey, on June 26, 1996, John O'Neill had said, "I am very willing and would welcome the opportunity for the [direction] matter and indeed, perhaps others relating to the [Ferrier] agreement, to be more clearly defined and decided by an independent and objective party whether that be an arbitrator or a Court of Law" (J. O'Neil, personal communication, June 26, 1996). Given the problems it was facing in enforcing its power of "direction", RUPA felt that it had little choice in calling the ARU's bluff. On November 7, 1996 RUPA announced it would seek to enforce the Ferrier letter before the Supreme Court of New South Wales.

Following this decision, a meeting occurred between Dempsey and Matthew Carroll of the New South Wales Rugby Union, where the latter suggested the negotiation of a collective bargaining deal to resolve the impasse between the unions and RUPA. In the ensuing months the two sides oscillated between negotiating a collective bargaining agreement and proceeding with RUPA's legal action.

Eventually, RUPA decided to proceed with its case. A preliminary matter that required consideration before the case could go to full trial was a request by the unions that RUPA provide security of costs—in the order of \$113,000—if it was unsuccessful in its action. The unions had turned their back on RUPA's 1997 "direction". It should be remembered that this "direction" had included a payment to RUPA of \$141,000. At the end of the 1995/96 financial year RUPA was in deficit to an amount slightly less than \$14,000 (Travis & Travis, 1996). RUPA charged its members—of whom there were approximately 100—an annual fee of \$15.

Mr Justice Giles found against the unions on security of costs. He likened RUPA's indebtedness to the non-preparedness of the unions to abide by RUPA's "direction", the substantive matter yet to be determined. He said the unions "held out by the letter of 16 August 1995 that money receivable from News would be distributed in accordance with the direction of the yet-to-be-formed [players' association], an entity which would not have been expected to have significant funds from sources other than the money receivable from News" (*The Rugby Union Players Association v. Australian Rugby Union*, 1997). Following this preliminary decision—the case did not proceed to full trial—the parties decided it would be best to finalise negotiations on a comprehensive collective bargaining agreement. The choice, which apparently confronted the unions, was to finalise such a deal, or be subject to RUPA's "directions" for, at a minimum, the next eight years.

Two Collective Bargaining Agreements

Rugby union in Australia, if not in other parts of the world, has a different, or distinct, “architecture” from other professional team sports. Most other professional team sports operate single, or stand-alone, competitions between the different clubs comprising their respective leagues—for example, the Australian Football League or major North American sports, such as baseball and basketball. Such sports may be embellished by “all-star” or state of origin games and select national teams for international competitions. In addition, soccer organises transnational competitions between leading or successful clubs, such as the European Cup. Rugby union is different in that “state” teams act as feeders to the national team, the Wallabies. The same is also true of cricket. The difference between rugby union and cricket, however, is that Super 12 games generate sizable crowds—averaging 20,000 in recent years—and respectable television audiences (T. Dempsey, personal communication, March 17, 2003), while state cricket matches hardly attract any spectators.

Under clause 1 of rugby union’s standard player contract, players sign with one of the three “states” (New South Wales, Queensland, Australian Capital Territory). Under the same clause, players can be released to train and play for the Wallabies as required. Under the terms of both collective bargaining agreements the three states can compete with each other in bidding for players. If they wish to offer a player income over a certain amount, the level of which is confidential, they will make a submission to the ARU for extra, or “top-up”, funding. A small number of high profile rugby league players have been enticed to play rugby union. Negotiations concerning their incomes were conducted with the ARU. Because of the revenues generated by the Wallabies and/or because the bulk of most revenues flow to the ARU, the three states are, in effect, financially dependent on the ARU for funds and resources.

Despite this peculiar “architecture” of Australian rugby union, its approach to collective bargaining is the same as that of other professional team sports. Negotiations occur between the ARU and RUPA. The state or member clubs are kept informed and consulted on developments, in much the same way as member clubs of other professional team sports. State representatives were involved in the negotiations of rugby union’s second collective bargaining agreement. All four unions, the ARU and the three states were signatories to both agreements.

In early October 1997, slightly more than two months after Mr Justice Giles’ decision, the unions and RUPA finalised a collective bargaining agreement, which would expire in October 2000 (Rugby CBA, 1997). “Agreement” is used here in the generic sense. As well as the collective bargaining agreement, it included four attached schedules. These covered terms and conditions of employment, a grievance procedure, and standard player contracts for full-time and casual players respectively.

The parties used two Australian collective bargaining agreements as models or a basis for discussion—the Australian Football League collective bargaining agreement 1995–1998 (AFL CBA, 1995), and Australian Soccer’s Ericsson Cup collective agreement 1996–1999 (Soccer CBA, 1996). They also examined an agreement in American football, the National Football League collective bargaining agreement 1993–2000 (NFL CBA, 1993). They were particularly interested in a lengthy section of the American agreement entitled “Guaranteed League Wide Salary, Salary Caps and Minimum Team Salary” (NFL CBA, 1993). This section linked players’ income to revenue received by teams and leagues, and defined which revenues would be included, or excluded, for the purposes of such calculations. Revenue sharing became the cornerstone of rugby union’s first collective bargaining agreement.

The agreement stated that 111 players contracted to the three states (a player roster of 37 per state) should receive specified total minimum payments, ranging from \$11.5 million in 1997 to \$13.31 million in 2000, or 25% of “player generated revenue”, whichever is the greater. “Player generated revenue” was broadly defined to include income obtained from broadcasting rights, match fees (revenues received from state governments to host a game in their state), gate takings, sponsorships and licensing or merchandising fees, net of commissions and other agreed deductables. Such revenue was not confined to income generated from the Super 12 and Tri-Nations competitions. It included revenues obtained from matches of touring or overseas teams against the Wallabies or states. Provision was provided for RUPA to audit the unions’ financial statements concerning player payments. In the event that total player payments were less than the thresholds specified for each year, the balance would be paid in the following year on a pro rata basis. It should also be noted that the collective bargaining agreement, and hence all payments, were subject “to there being no Material Adverse change to the ARU’s financial arrangements”. This was defined as being a 25% or more decline in player generated revenue compared with the previous 12 months.

No fewer than 21 (this was later changed to 22 when an extra player was allowed to be a reserve) of the 37 contracted players from each state would receive minimum salaries of \$50,000 for 1997, increasing to \$67,000 in 2000. The remaining 16(15) players were to receive minimum salaries of \$25,000 for 1997, increasing to slightly less than \$29,000 in 2000. The agreement also specified that the unions would pay RUPA \$200,000 in 1997, increasing to \$375,000 in 2000 to aid it in “the furtherance of ... [its] objects”. In turn, RUPA agreed to provide the unions with an auditor’s report to demonstrate that such income was being expended in accordance with its “legitimate” [author’s term] objectives. Similar salaries are paid to player associations, via collective bargaining agreements, in Australian football, cricket and soccer (AFL CBA, 1998; Cricket CBA, 2001; Soccer CBA, 1999). Such agreements specify that proportions of “player generated revenue” are to be

directed to organisations concerned with pursuing the collective interests of such players. English soccer's Professional Footballers' Association has received a share of broadcasting income since the mid-1950s. This has funded welfare and (second) career training and education for players (Dabscheck, 1979a, 1986; Harding, 1991). During the 2001/2002 season it used the threat of strike action to ensure the continuation of such payments by the Football Association (see Professional Footballers' Association, 2002).

Players were required to take out their own medical insurance, with the unions meeting medical and related expenses not covered by such insurance. Players who suffer career-ending injuries will have their contracts paid out in full. The agreement also contained a group insurance scheme, providing payment of up to \$500,000 for players who die, or are totally or permanently disabled, as a result of an injury due to their employment as a union player. Other than for matches played as part of a tour, players were entitled to an eight-week break in any given 12-month period. There is no provision in the agreement to compensate players in the eventuality that they are unable to enjoy the full eight weeks off, due to such a tour.

The agreement contained clauses concerning player directors on various union boards, a joint committee on player safety and welfare, and a career-training scheme to help players find alternative employment when they retire from rugby union. The maximum total payments for this scheme ranged from \$100,000 in 1997 to slightly less than \$116,000 in 2000. Procedures were laid down for regular consultations between the parties. The unions undertook not to enter into collusive arrangements in negotiations with players, and not to introduce transfer, drafting or assignment rules during the life of the agreement without RUPA's written consent. This latter provision can be contrasted with clause 6(b) of the Australian Football League collective bargaining agreement, 1998–2003, which states that “Each of the parties agree that the AFL Player Rules [drafts and the salary cap] are necessary and reasonable for the proper protection of the legitimate interests for the AFL and AFLPA” (AFL CBA, 1998). Such a clause was included in the Australian Football League's agreement to protect its “restrictive” labour market rules from common law attacks as being unreasonable restraints of trade. This strategy of using collective bargaining as a means to exempt labour market rules from unreasonable restraint of trade, or anti-competitive actions has been employed by a number of professional team sports in different legal jurisdictions (see Dabscheck, 2000).

A full-time player is defined as a player who plays, or is a reserve for, four Super 12 games and must receive income at least equal to the minimum salary specified for players 21(22) to 37 for the appropriate year. Under the grievance procedure, disputes which cannot be resolved over interpreting the agreement, are to be processed either by mediation through the Australian Commercial Disputes Centre, arbitration through the Commercial Arbitration Act 1984 (New South Wales), or an appropriate court. Disputes between unions and players

over employment matters are to be submitted to mediators registered with the National Sports Dispute Centre.

Four grievance disputes occurred during the life of the first agreement. The first occurred in 1998 when RUPA made representations to the New South Wales Rugby Union, which resulted in payments to two players being increased to the minimum levels contained in the collective bargaining agreement. There were two disputes over players' intellectual property rights—the use of players' images and signatures. With respect to the former, the ARU made payments to the players concerned (Rugby Union Players' Association, 2001, pp. 4–5). Ultimately both intellectual property issues were resolved in the second collective bargaining agreement (see below). The fourth and final grievance, which required arbitration, involved disputes over minimum payments to four Queensland players. In a decision handed down on May 2, 2001, the arbitrator (Meagher, 2001) found that the Queensland Rugby Union had underpaid two players; that they had received less than the minimum wages due to them under the collective bargaining agreement. One player had been invited by the Queensland Rugby Union to train for Super 12 games, and the second had played, or been a reserve, in at least four games. While the other two players had trained with Queensland's Super 12 team, it had been at their own initiative, with the hope of impressing coaching staff and obtaining a contract, rather than as the result of initiatives of the Queensland Rugby Union.

Negotiations for a second collective bargaining agreement commenced on June 30, 2000. They occurred in the context of a “healthy” growth in revenue. Between 1996 and 1999 (1999 being the most recent data available to the negotiating teams), Australian rugby union's income almost doubled from \$20 million to slightly less than \$39 million (Australian Rugby Union, 2000). This growth was fuelled, in particular, by the performances of the Wallabies—Australia won the 1999 Rugby World Cup and gave stellar performances in the Tri-Nations series and the Bledisloe Cup—and of the Australian Capital Territory Brumbies in the Super 12. In its 1997 *Annual Report*, the Queensland Rugby Union said:

The [first] Collective Bargaining Agreement has been a landmark in the professionalisation of the sport and is likely to provide significant benefits in terms of the relationship between the sport as a whole and professional players. In comparison with other professional sports in Australia, this Agreement has consolidated the relationship between professional players and the sports administrators and reduced the potential for conflict. It has also given the sport and the players greater certainty and predictability about the growth of the sport and the relative distribution of the income generated by the sport.

It is probably not surprising to report that RUPA drew attention to this quote, paying particular emphasis to the “certainty” and “predictability” virtues provided by collective bargaining, in the early phase of negotiations for the second

agreement. It took nine months before a second agreement was concluded. The length of negotiations resulted from a combination of distractions caused by the Sydney Olympics, the traditional Christmas holiday period and various unforeseen circumstances.

The second agreement (Rugby CBA, 2001), which covers the period 2001 to 2004, built on the model of the first agreement, with a number of notable modifications. The definition of player generated revenue was broadened in two ways. First, broadcasting rights were expanded to include Internet rights, broadbanding, data casting and digital rights. Second, new revenue streams were included, such as catering rights, travel packages and hospitality packages. The players' minimum share of revenue was increased from 25% to 30%. Total minimum payments to players were increased, ranging from \$16.6 million to \$19.64 million, over the life of the agreement. State rosters were increased from 37 to 40 players. This was to provide space for a shadow squad for a possible fourth Australian Super 12 team (though such a competition would presumably have more than 12 teams). This attempt was vetoed by New Zealand, and is associated with the falling out between the two nations over the joint hosting of the 2003 Rugby World Cup. The Cup is to be hosted solely by Australia. For an account of this dispute from a New Zealand perspective, see Eichelbaum (2002). The second agreement also makes provision for each of the states to trial up to three players for a period of three months, at a wage of \$12,500 for that period, which can be repeated once. This is designed to enable states to assess more fully and encourage younger, marginal players.

The two-tiered system of minimum payments has ended, with the introduction of a single minimum wage of \$45,000, beginning in 2002, adjusted annually for changes in the consumer price index. Payments to RUPA were increased to \$440,000 for 2001, annually adjusted for price changes. RUPA's payments will be incorporated into the calculations concerning the 30% of player generated revenue; previously they had been in addition to the 25% earmarked for players. The second agreement substantially increased funds available for career training, from slightly less than \$116,000 to a minimum of \$300,000 per annum. Fifty per cent of this career-training money will be included in the 30% of player generated revenue available for players. The allocation of such sums has enabled the appointment of a (jointly funded) training and welfare officer, who operates out of RUPA's office. In addition, \$250,000 adjusted annually for price changes, has been allocated to a training and education retirement fund.

The task of the training and welfare officer, aided by career and education officers in each of the respective states, is to develop and coordinate various second-career training and welfare programs for players. Such programs range from advice and financial support concerning further, usually university-level, education, searching out prospective employers for players, welfare and counselling services

and financial advice. Similar schemes operate in other Australian sports, such as the Australian Football League (AFL CBA, 1998). For details of services provided to rugby union players in 2002, see Rugby Union Players' Association (2002).

As mentioned previously, there had been disputes over the use of players' signatures and images. Under the second agreement, limits were placed on the number, or amount, of signatures players were "required" to provide and an even distribution of revenue so generated between the ARU and players. The second agreement adopted a two-pronged approach, following a model developed in Australian rules football. First, protected sponsors can use images of players, in the act of playing, in groups of four or more (the Australian Football League agreement protects six sponsors). If sponsors use fewer players in an image, they are required to obtain the consent of the players concerned and negotiate an appropriate fee. Second, players can exploit their own images to promote various goods and services, provided that such goods and services do not conflict with protected sponsors.

The second agreement increased the level of death and disability insurance from \$500,000 to \$2 million. However, because of the size of the premium required, especially after events associated with the insurance industry after terrorist attacks in the USA on September 11, 2001, the amount was reduced, by agreement, to \$1 million. To avoid problems associated with injuries and player burnout, the maximum number of games players would be required to play in a season was set at 30. A game, or more correctly match, is defined as "any Rugby match in which a Player is required to participate pursuant to the terms" of his contract.

Table 2 shows the total minimum payments and estimated average income of Australian rugby union players from 1996 to 2004, from the introduction of professionalism to the end of the second collective bargaining agreement. Three caveats should be noted in calculations of estimated average income. First, these estimates have been made on the basis of the maximum number of players covered in the two agreements—111 and 120, respectively. The actual total number of players employed by the unions has been less than this. Second, per the second agreement, payments to RUPA and half of the (minimum) payments of \$300,000 for career training are included in player generated revenue. Third, 2001 was a successful season, both on the field and financially. The 2001 Lions tour generated much interest, with the Wallabies experiencing success on the field. Per the revenue-sharing formula of the collective bargaining agreement, it is estimated that players will receive approximately \$400,000 in top-ups to their total payments. It has been decided that this extra income will be distributed to the Wallabies, on a pro rata basis per game played, as a bonus (T. Dempsey, personal communication, 2002). Observation of Table 2 reveals that between 1996 and 2004 players' average incomes will increase by something in the order of 90%.

Various major benefits afforded to players in the last year of the 1997–2000 agreement and the first year of the 2001–2004 agreement are presented in Table 3. Table 3 demonstrates the extra benefits available to players under the second collective bargaining agreement. Players' share of rugby union income increased, as did total minimum payments to players, minimum and average salaries, various match fees and income from intellectual property rights. In addition, extra income has been allocated for career training and training and educational allowances. Table 4 compares various provisions in the four current collective bargaining agreements in Australian professional team sports, as at 2001: cricket, Australian rules football, soccer and rugby. The following provisions are compared: players' share of income, average and minimum salaries, expenditure on career training, education and player welfare, rules for players experiencing career-ending injuries and insurance for death and disability. The table shows that, in comparison with other Australian professional team sports, rugby union players are more than relatively well-off.

Since the completion of the second collective bargaining agreement, a fifth matter has emerged which was settled under rugby union's grievance procedure. The issue in dispute was the ARU requiring players to play in a northern vs southern hemispheres match, organised by the IRB. On September 10, 2002 an arbitrator (Spender, 2002) ruled that the contracts under which players were employed did not enable the ARU and state unions to compel players to play in games which did not involve the ARU or state unions.

Table 2: Total Minimum Payments and Estimated Average Income of Australian Rugby Players: 1996–2004

Year	Total Minimum Payment (\$)	Estimated Average Income (\$)
1996	9,632,000	86,775
1997	11,500,000	103,604
1998	12,075,000	108,784
1999	12,678,000	114,217
2000	13,311,000	119,919
2001	16,614,181	138,452 (141,785)*
2002	17,498,298	145,819
2003	19,041,287	158,677
2004	19,641,557	163,680

* Includes extra payments (in total, approximately \$400,000) to players

Sources: Dabscheck (1998); Rugby CBA (1997, 2001)

Table 3: Collective Bargaining Agreements

	First Agreement Year 2000	Second Agreement Year 2001
Percentage of revenue as player payments	25%	30%
Total minimum player payments	\$13,311,000	\$16,614,181
Players sharing	111	120
Average salary	\$119,919	\$138,452 (\$141,785)*
Minimum salary	\$28,940 Two \$67,000 Tiers	\$45,000 (Commencing in 2002)
Termination date of standard contract	31 December	30 October
Use of players' images	Subject of arbitration dispute	Special rights sponsors protected
Use of players' signatures memorabilia	ARU receives all income	Players receive 50% income
Sponsors/VIP	Unlimited	Limits clearly defined
Test match payment	\$9,000 per match	\$10,000 per match ⁺
Australia A	\$2,000 per match	\$2,500 per match
Death and permanent disability	\$500,000	\$1,000,000 [#]
Career training	Maximum of \$115,762.50	Minimum of \$300,000
Training and education allowance	Nil	\$250,000
Fines for serious misconduct	Maximum of \$500	Maximum of 4 weeks
Telephone allowance	Nil	\$250 per player
Splitting of contract for image rights (potential tax saving)	Not allowed	Allowable subject to Taxation Office ruling
Training contract of 12 weeks for \$12,500; can be repeated once	Not allowed	Allowed for maximum of three players for each state

* Includes extra payments (in total, approximately \$400,000) to players

⁺ Moves to have this adjusted for changes in consumer price index

[#] The collective bargaining agreement stipulated a figure of \$2,000,000. It was reduced, by agreement, to \$1,000,000, due to the cost of the premium following terrorist attacks in the USA on September 11, 2001.

Source: Rugby Union Players' Association, private communication, not dated

Table 4: Comparisons of Various Provisions in Cricket, Australian Rules Football, Soccer and Rugby Union Collective Bargaining Agreement for 2001

	Cricket	Australian Rules Football	Soccer	Rugby Union
Players' share of income	25%	26.9%	57%	30%
Average salary	\$151,724 (145 players)	\$117,898 (704 players)	\$43,000 (270 players)	\$141,785 (120 players)
Minimum salary	\$22,500 (Rookie \$10,000)	\$25,000 (Rookie \$12,500)	\$21,497	\$45,000*
Career training, education and player welfare	\$100,000	\$5,000,000 (approximately)	\$80,000	\$550,000
Player suffers injury which prevents completion of contract	Pay 2 years of contract	30 match payments or half of base pay if last year of contract	Pay out player's entire contract	Pay out player's entire contract
Death and disability insurance	—	\$250,000	—	\$1,000,000+

* Commencing in 2002

+ The collective bargaining agreement stipulated a figure of \$2,000,000. It was reduced, by agreement, to \$1,000,000 due to the cost of the premium, following the events of September 11, 2001.

Sources: AFL CBA (1998); Cricket CBA (2000); Soccer CBA (1999); Rugby CBA (2001); information supplied by player association representatives

On Certainty and Predictability

Rugby union has traditionally been an amateur sport. Events in rugby league—the Super League war—induced rugby union to embrace professionalism. In doing so, rugby union found itself involved in a war for players with the WRC. Competition between the stalwarts and upstarts considerably strengthened the bargaining position of players. The players decided to act collectively in determining which of the rivals they would join. This decision, in turn, established the manner in which industrial relations would be conducted in the professional era.

The players were fortunate to have in their midst leaders able to capitalise on the rivalry between the Australian unions and the WRC. They extracted major concessions from the Australian unions in the form of the Ferrier letter of

August 16, 1995. Not only had recognition been granted to a yet-to-be-formed players' association, but this "body" was empowered to direct 95% of broadcasting revenues that would be provided to the ARU by News Corporation for 10 years. To use the jargon of economists, the players, by acting collectively, ensured that they captured the rent associated with a new broadcasting deal.

In 1996 and 1997 the Australian unions attempted to extricate themselves from the Ferrier letter by claiming all its terms had been exhausted. RUPA decided it would need to test the letter's enforceability. RUPA achieved an initial victory before the Supreme Court of New South Wales on security of costs. This, in turn, strengthened RUPA's hand in negotiations which had begun over a proposed collective bargaining agreement. Two agreements have been negotiated in Australian rugby union. The second, or current, agreement compares more than favourably with other such agreements in Australian sport.

Three aspects of rugby union's collective agreements are highlighted. First, they make use of a system of revenue sharing with guaranteed levels of total minimum payments. Second, players who suffer career-ending injuries will have their contracts honoured. Third, funds are set aside, and the culture of Australian rugby union is to support players in making the transition to second careers once their playing days come to an end. This model essentially says that players should give their all to playing, that they should not be distracted by side issues, and that their rights and obligations are enshrined in a collective bargaining agreement to be policed and enforced by RUPA, if and when needed. In the words of the *Queensland Rugby Union's Annual Report* of 1997, this is a model of "certainty" and "predictability". The relatively small number of grievances, three of the five being resolved by negotiations, is one indication of the model's success.

It is generally acknowledged that Australia has been successful in the professional era. While fans and informed commentators may seek to examine what happens on the field of play and the strategies and tactics adopted by coaches to explain such success (see Macqueen, 2001), could it be gently suggested that they are searching in the wrong place. To understand Australian rugby union's success, such persons would be better advised to look at what happens in the front office, in terms of the history of and multi-faceted relationship that exists between the Australian unions and the RUPA.

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