

Racism and the Law in Australian Rules Football: A Critical Analysis¹

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In the last 30 years, sport has provided an important forum for the dissemination of political ideas. The famous black power protest at the 1968 Mexico Olympic Games, the Springbok rugby tour demonstrations in 1971, the debates surrounding Indigenous Australians at the Brisbane Commonwealth Games in 1982, and the controversy surrounding Cathy Freeman and the Aboriginal flag at the Commonwealth Games in Victoria, Canada,² are all significant events highlighting the importance of sport as a potential site for the expression of resistance to racial oppression and socio-political marginalisation before national or international audiences. The protests of athletes at significant sports events have the capacity, seemingly, to generate proactive reform both within and beyond sporting circles on issues such as institutionalised racism, racial vilification and social inequality.

It is critical to recognise that inequality, racism and racist speech are political realities, and continue to pose problems for sports administrators in Australia and internationally.³ Simplistic cause and effect indicia for the success of formal regulatory responses to racial vilification both within and beyond the sporting realm must be treated with caution. Despite the symbolic significance of acts of protest against racism within and beyond the sporting field, it is necessary to critically analyse, from a variety of perspectives, the multiple effects of law reform policies in responding to such acts. Traditional socio-legal methods of analysis frequently assume that law reform provides an adequate means of responding to the concerns of those engaged in political protest in sport. As Laster and Taylor suggest, because sport is such a popular cultural forum, formal law may be secondary to popular cultural reception in generating social change on contentious political issues within and beyond the sports field. This is particularly so in nations such as Australia, where symbolic notions of sport and 'fair play' often take precedence over matters of politics, law, and the social marginalisation of minority groups:

... our dominant national ethos at present is one of tolerance — a fair go, doing the right thing and fixing problems as they arise. We should be celebrating the measure of support that multi-culturalism enjoys in our society. The litmus test is not the colour of the flag, or the preamble to the Constitution, but the fact that football fans, like everyone else are onside — keeping the game honest, being entertained and being enthusiastic.⁴

While such perspectives favour analysing the social impact of significant sporting events in generating law reform and eroding discrimination against multi-ethnic communities in positive terms, it is submitted that the cause and effect relationship between law and culture as methods of achieving social change are far more complex, dynamic and problematic. Racism on the sporting field involves an interplay of factors, including consideration of the broader social, cultural and legal manifestations of the practice, and the microsituational characteristics governing each allegation of racist speech. Moreover, it is not necessarily the case that football fans unanimously 'keep the game honest' by critically thinking about the behaviours emerging in the sporting context, or by arguing for or against particular law reform proposals. Some initiatives dealing with racist speech may actively promote a 'back fire effect' involving further acts of counter resistance which promote racism. Others might lead to symbolic rather than substantial changes in the attitudes or behaviour of members of the community. A critical perspective which recognises the complex intersections of sport, history, society, culture, law, power and a range of political interpretations of each of these variables, can provide contextualised insights into the intricacies of the problem of racist speech in sport, and clues on how to respond effectively to the problem.

In critically analysing the impact of measures adopted in Australia to deal with racist speech, it is necessary to examine the particular contexts surrounding the debates on the issue, and how they progressively intertwine to generate distinctive legal responses to individual or collective grievances within existing law reform structures or the current 'rules of the game'. In this respect, methodological guidance can be obtained from figurational sociologists such as Eric Dunning of the Leicester School of Sociology,⁵ and critical socio-legal theorists,⁶ to indicate that particular social, legal and cultural phenomena (both within and beyond sport) evolve over time, and that the principles underlying reforms to legal procedures and processes occur within a context of power relations

which have multiple and varied meanings for victims and perpetrators of racial abuse, sports administrators and the broader public. Disagreement regarding the 'facts' of each case and the desired measures of reform will invariably occur. However, this is part of the process of identifying the incremental and contextual nature of various sociological phenomena and their regulation by law.

For the Leicester school, the parallel developments of organised domestic and international sport and the rise of the centralised state during the seventeenth and eighteenth centuries involved a series of incremental processes which arguably 'civilised' British society, and strived to entrench the state's monopoly over controlled violence. Despite criticism of the generality of this theoretical approach and the narrow readings of data presented in the Leicester research,⁷ their methodology indicates that organised sport developed in a broader social context of burgeoning industrialisation, and increasing complexity and tension governing inter- and intra-class relations.⁸ These tensions evolved over time and are subject to varied political and disciplinary interpretations, each of which remain highly contested.

Critical legal scholars seek to challenge the inviolability of legal power and legal discourse. Several theories of Western law dispute the claim that law can be, or is, applied uniformly across the breadth of social experience, and that law reform solves all social ills for all people. Rather, law *purports* to apply equally in all circumstances, under its various institutional and rhetorical guises (and disguises). In addition, the structures of law making become institutions for the production and reproduction of power relations which have various implications on each individual or group of people, at different times and in different situations. While much disagreement exists regarding the efficacy of the law's approach to dealing with various social problems, from a methodological view point these multiple contexts of law require holistic acknowledgment when examining how each law, and its application to individual legal cases, evolves over time to produce incremental change to legal procedures and individual or collective social behaviours. By focusing on this critical intersection between law as realistic and reformed practice, and law as a form of 'ideological domination' wedded in a complex series of procedural and conceptual power relations,⁹ it is possible to explore the diversity of opinion regarding the efficacy of law reform, and the way in which individual reforms can, and cannot, solve the problems which they are

designed to solve. This in turn can lead to further reforms and improvements to our legal system, or can highlight ongoing problems in the law-making process which need to be addressed.

This article explores the issue of racist speech in Australian Rules football and its regulation from these dual perspectives. First, the article indicates that the phenomenon of racist speech in sport has evolved in a particular social context which has mirrored and perpetuated many of the difficulties facing Indigenous Australians since British colonisation. The entrenchment of racist speech as a legitimate strategy on the sporting field and the continuing denial of this problem until the significant actions of Nicky Winmar and Michael Long, have generated a series of debates which impinge on the way racist speech is viewed as a practice requiring either no, or proactive, regulation by sports authorities. In addition, these developments have influenced the content and implementation of regulations aimed at eliminating the practice both on and off the sporting field. These debates are significant, as they provide an indication of the division of opinion over the issue of racist speech, the way it is regulated, and the effectiveness of the regulatory process. Second, despite the significant legal and para legal reforms to both the laws of sport, and the Commonwealth laws regarding racial hatred in Australia, the commonalities of these measures raise several problems which require further critical research and analysis. In this respect, the reform process creates a series of new and unintended conceptual problems, and reinvents many existing social problems, each of which is a direct legacy of the content and implementation of these measures. This discussion questions the ability of the current Australian Football League (AFL), and Commonwealth law reforms to effectively deal with or proactively counter the very real social effects of racist speech and highlights the limitations of the methods employed to initiate and enforce these rules.

The article is divided into three sections. First, available evidence on racism in elite level Australian Rules football as experienced by Indigenous footballers in the last 40 years is outlined. Three major time frames have been identified. The first is the historical legitimisation of the tactic of racist speech before the famous Winmar incident in 1993. The second is the significance of the Winmar incident as an event which gave political notice to the football community that racism was a problem that needed to be dealt with formally by AFL authorities. The third is the aftermath of

the Winmar incident, and the significance of further incidents of racism before and after the implementation of the AFL's Code of Conduct dealing with racial and religious vilification. The features of racism in each key period are analysed using evidence from both biographical and press accounts of the practice as outlined in one major Melbourne newspaper. Second, the provisions of the AFL Code of Conduct, and the Commonwealth Parliament's *Racial Hatred Act* 1995, are outlined. These responses to the broader social and political concerns over racist behaviour in Australia have important implications for our understanding of the phenomenon of racist hatred in Australian social, legal and sporting culture, and provide several insights into the role of law in dealing with racist speech both on and off the sports field. Third, the article discusses the implications of these reforms in the context of the broader debates on racism and racist speech and their regulation in contemporary Australian sport and society.

Before proceeding, it is essential to recognise that identification as an 'Indigenous' person or footballer can be self or externally embraced, imposed or denied. Some people with Indigenous backgrounds do not identify themselves as Indigenous for a range of personal and professional reasons. Others may identify themselves as Indigenous and not experience racist taunting. Others may visibly appear to be Indigenous, and are consequently subject to racial vilification on the basis of their appearance, yet are wrongly identified as such.¹⁰ Moreover, racism may be a problematic issue for some people continually, but for others it may only emerge as a problem from time to time. The result is that there are certain subjective notions of embracing or denouncing an 'ethnic' identity which vary in different contexts. The externally-imposed definitions of racial terms may be justifiably or unjustifiably applied in various situations.¹¹ As Tatz indicates, former West Perth, Perth, and North Melbourne footballer Barry Cable, personally expressed doubts about his Indigenous status at various times during his career. This led to varied public interpretations of that status.¹² Irrespective of these qualifications, a considerable body of evidence in Australia suggests that there have been particular players at certain times through AFL history who have been frequently victimised on the football field on the grounds of their actual or perceived Indigenous origins. This has led to the significant politicisation of their experience in recent years.

Incidents of Racism in Australian Rules Football involving Indigenous Footballers

I've said [racist] things before. There's no doubt about that. I'd be talking shit if I said I didn't, and I've had a go at the Longs, the Kicketts, the Lewises ... You try to use that to your advantage if you can. If they become sucked in and want to belt you, well beautiful, suits me. Doesn't worry me in the slightest. They're off their game, they're not concentrating and they can't play with their natural flair and their natural ability and that suits me fine.¹³

The involvement of Indigenous people in professional Australian Rules football is generally consistent with their status in the broader Australian community. Indigenous Australians have been marginalised from mainstream Australian culture since the arrival of British-Irish immigrants in 1788. Since that period, racism in mainstream sport has been as endemic as in broader Australian society. One manifestation of this is racist sledging and its use as a 'legitimate' competitive tactic. This practice has historically been institutionalised in Victorian Football League (VFL) and AFL football, and is a common theme emerging in documented histories of Indigenous footballers. The nature of this problem is outlined chronologically, highlighting the significance of Nicky Winmar's actions as the centrepiece for the AFL's approach to regulatory reform.

Before Winmar

Evidence indicates that between the 1860s and the end of the 1940s, there were only six or seven identifiable Indigenous Australians who represented VFL teams.¹⁴ By 1950 there were only seven or eight.¹⁵ By 1994 a total of 63 had played VFL/AFL football.¹⁶ Although Indigenous participation at the professional level has been quantitatively minimal, the achievements of these players have had a profound impact on the game. Tatz records the following statistics: 30 Grand Final appearances, four Brownlow medal runners-up and one winner, and 21 selections for All-Australian sides.¹⁷

Along with these achievements, the incidence of racist abuse has confirmed the 'otherness' of many Indigenous footballers. This is a consistent theme in personal, media and biographical accounts of Indigenous players on their careers. Irrespective of crowd perceptions of the individual footballer, racist taunting from opposition players and

spectators is consistently documented as a legitimate tactic directed at Indigenous athletes since the 1930s. There are numerous examples which illustrate this point.

Commonly named as the first Indigenous footballer to play at elite level in Victoria, Doug Nicholls was a popular footballer during the 1930s. However the early days of his career were characterised by constant racist taunting and discrimination perpetrated by his Carlton team mates. After the first six weeks of his career, Nicholls transferred to the Fitzroy Club, played a total of 54 matches between 1932 and 1937.¹⁸ Documented evidence of his on-field experiences of racist sledging remains somewhat scant. This could be viewed as a reflection of his short career span, and possibly the marginal status of Indigenous Australians within the broader Australian community at the time.

Graham Farmer was one of the most decorated players in Australian football.¹⁹ It is commonly argued that Farmer was the greatest ruckman in the history of the game, revolutionising the art and technique of ruck play, and forging a new level of professionalism and dedication to the game. While racism was a prominent part of Farmer's experience as a footballer in both Perth and Victoria, its extent has largely been denied by coaches, Farmer himself, and commentators on his football career: 'in the hefty clippings file on Farmer in the library of West Australian Newspapers the words Aboriginal or native do not appear in connection with him until a piece written in 1987'.²⁰

Farmer was generally viewed as a de facto 'white footballer' during his playing days. Ignoring the problem of racist sledging was viewed as the best way, in Farmer's view, to respond to the practice. Focusing on football was commonly acknowledged as the means to deal with the racist taunts he routinely experienced as a player. Farmer's own words are indicative of the response to on-field racism deemed 'appropriate' during his career: 'If you got into a fight about every stupid comment that was made you would have four or five fights a day', [Farmer says], 'It just wasn't worth it?'²¹

Similar experiences are documented by other Indigenous footballers. In the 1970 Grand Final between Collingwood and Carlton, Carlton footballer Syd Jackson reports that he was made highly aware of his 'blackness', and was the victim of racial exclusion when the Collingwood bar refused to serve him after the match, and evidence suggests that he was vilified during the course of the same match.²² Jackson even

successfully utilised the defence of racial vilification to avoid suspension for striking in the second Semi-Final two weeks previously. After being reported by four field umpires, Jackson was found guilty of striking and faced certain suspension, jeopardising his chances of playing in the Grand Final. Jackson's advocate introduced the defence of racial provocation, and Jackson was given a severe reprimand by the tribunal enabling him to play in the Grand Final. The case caused a great deal of controversy in the light of statements by the victim of Jackson's assault, Collingwood's Lee Adamson, who claimed that no racial slur was used.²³ Jackson was reported in 1993 to have admitted to fabricating the defence.

The experience of racial sledging was not confined to footballers. Former VFL umpire Glenn James experienced a similar 'double awareness' to that expressed by Jackson. As the first black 'Man in White', James was subject to gross racial vilification from both spectators and players. His experience raised the question of whether racial vilification could be the subject of criminal charges: 'He is [considered] a boong and a Sambo long before he is an umpire ...',²⁴

The experiences of the Krakouer brothers, who played for North Melbourne during the 1980s after having been recruited from Western Australia, reiterate the common practice of racist vilification from spectators in Victoria:

... 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'.²⁵

The standard means of negotiating racist taunting which emerges from the accounts of Indigenous players is to 'turn a blind eye' and internalise the abuse without letting it affect their on-field performance. Protest, in the form of violent retaliation,²⁶ or other sorts of 'deviance' such as 'going walkabout',²⁷ are also commonly documented. Racism was culturally accepted as a competitive tactic within football. As the following comment illustrates, silent compliance and not letting the practice affect your playing ability, were recommended by coaches as the only response to racial vilification:

Mal Brown took over as coach and he sat down with me and drummed it into my head that I had to ignore the racial stuff, that the more I reacted, the more of it I'd get. I realised that if I wanted to make it in football, I had to put the insults at the

back of my mind, forget all about them. It was hard, but I did it, I didn't even notice after a while ... now I hardly react. Football is so professional that I suppose players have the right to try anything to upset the opposition. It's probably not racist at all.²⁸

The evidence indicates that the low rate of Indigenous participation in professional football is inversely related to high rates of racist sledging, and its consequent normalisation as a feature of VFL/AFL football. Racist taunting has traditionally been viewed as a standard part of the game which should not be challenged by those experiencing victimisation. It is seen by perpetrators, senior officials, and even victims as a justified and justifiable tactic within the context of active sports competition. The actions of Nicky Winmar in 1993 however challenged the 'sanctity' of this practice.

The Winmar Incident

The sports domain has produced its own brand of respect. The best recent barometer was Nicky Winmar's skin-baring stand to the Collingwood mob, an episode that a decade earlier would have earned him screams of condemnation from the media and the sports world. Instead, he was lionised for his defiance.²⁹

On 17 April 1993, Nicky Winmar engaged in a significant act of defiance against racial taunting. After a best afield performance, with continual racist taunting from spectators, Winmar faced the Collingwood cheer squad, repeatedly raised and lowered his arms, lifted his jumper, pointed to his chest, and effectively declared 'I'm black — and I'm proud to be black'. Winmar then allegedly blew kisses to the crowd before jogging to the centre of the field and embracing fellow Indigenous footballer Gilbert McAdam.³⁰ The image of Winmar's action is well etched in the memories of football followers, a poignant visual icon reproduced frequently in press reports, caricatures, journalistic and academic critiques of both overt and subtle forms of racism.³¹ The incident was significant for the St Kilda team,³² all Indigenous footballers, and for Winmar personally.

Although it did not occur immediately,³³ much critical debate ensued. This consisted of calls from certain sectors of the press for official regulation to deal with the 'bagging from a handful of moronic spectators',³⁴ the perceptions of other Indigenous players experiencing racism,³⁵ statements

from prominent politicians calling for formal regulation of racist speech,³⁶ and comments from current players regretting their use of the 'tactic' in the past.³⁷ Opinion was divided on the issue. However, several comments reiterated the normalised response to the practice on the sporting field.

Former Sydney Swans player, Jamie Lawson, was quoted as saying that racial abuse was common during matches. His words reiterate the 'standard' response to the practice by Indigenous footballers:

They call us niggers and all that. Yes, it does go on. Some of the players, some of the Collingwood players, have a go at us. They call us black bastards and everything else. I don't mind. I ... just try to play good football.³⁸

West Coast Eagles defender John Worsfold confessed to engaging in the practice, but stressed that it was a common feature of the game which was justifiable in the context of on-field competition:

The remarks are made in the heat of the moment without thinking, a lot of the time. I don't think any player holds anything against any other player; they just do what they can to get an advantage. It's always the same after a game; you disregard all those sort of things about your mother or your sister. I've never heard guys complain about it, really.³⁹

This view was supported by former Collingwood captain, Tony Shaw:

It's a business out there ... I'd make a racist comment every week if I thought it would help win the game. I couldn't give a stuff about their race, religion or creed. If they react, you know you've got 'em ... It's no different calling a bloke a black bastard than him calling me a white honky, and it only lasts as long as the game.⁴⁰

Football administrators echoed these perceptions. Allan McAlister, former Collingwood President, indicated that racial sledging is 'part of the game':⁴¹

... it is the nature of sport, the nature of human beings and the real issue is not racism, but ... trying to put the boy off on the day ... It is tactics used by one club or one boy against his opponent and it goes both ways.⁴²

Perceptions of spectators about the practice were also documented, with some agreeing with this justification. When interviewed for the *Sunday Age*, 74-year-old Mary Millard indicated:

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 it (racial taunts). It's just a way of letting out your feelings.⁴³

Interestingly, there were some inconsistencies in this respondent's approach to the issue: if someone called Tony Liberatore a 'wog' at the football she would 'job him'.

Editorial commentaries which expressed criticism of the racial taunting as a valid means of gaining a competitive advantage generally maintained the prominence of the issue in the media. This criticism assisted in pressuring the AFL to respond to the issue through formal regulation. The AFL Commission vowed to introduce a Code of Conduct to deal with racial vilification by players and officials. The Code promised to supplement existing provisions in the AFL rules which penalise abusive language. No action was taken immediately to formally regulate racial vilification on the football field, and the regulation of vilification by spectators was largely overlooked in the context of these proposals.

The Winmar incident was followed by several related events during the remainder of the 1993 season. After claiming that Indigenous people should 'conduct themselves like white people' in order to gain community respect in Australia, the then Collingwood President Allan McAlister faced extensive public condemnation, particularly from Indigenous communities in Darwin. This led to considerable debate over a reconciliation visit by McAlister designed to promote an annual match between the Aboriginal All Stars and the Collingwood Club.⁴⁴ A senior football administrator was reported to have made a racist joke in public.⁴⁵ North Melbourne player Adrian McAdam raised allegations of taunts such as 'black cunt' and 'go sniff your petrol' after a nine goal performance against Collingwood. This incident received little public debate.⁴⁶ The 1993 Grand Final, or 'The day of Atonement', contrasts as an attempt by the AFL to 'celebrate' Indigenous people in Australian cultural life and to portray this to an international television audience. Entertainment included Indigenous rock bands and traditional dancers. Michael Long, an Indigenous player, was best afield in the match, winning the Norm Smith medal.⁴⁷ However, the most significant incident emerged in 1995, almost two years after Winmar's symbolic act. The Michael Long incident re-opened an otherwise concluded debate and led to further demands for a proactive regulatory response to the problem of racism by the football community.

Michael Long

Why do we have to put up with it? Why do they have to say these things? That's not part of the game; it's not why I play the game. It's not what we should have to put up with. I think any racial or verbal abuse concerning colour or about your parents directed at you is wrong ... Aboriginal people have been copping it for too long and I wanted to make a stand not just in relation to what happens on the football field but off the field in day-to-day life. People have to change their way of thinking, their opinion of Aboriginal people, and even their jokes. It's not about the colour of your skin but what's inside you that counts, and that goes for all people.⁴⁸

In a front page 'exclusive' three days after the event, the *Age* reported that Essendon midfielder Michael Long had experienced 'shocking' racist abuse from an unnamed Collingwood opponent⁴⁹ later identified as Collingwood ruckman Damian Monkhorst. The difference between this incident and that involving Winmar was that Long would force the issue, testing the resolve of the AFL to implement the reforms promised two years previously:

We wrestled each other to the ground near the members' wing and it was while I was getting up he called me a black bastard. There were other players around us who heard the words so I asked the umpire why he didn't report him.⁵⁰

Incensed by the failure of the umpire to report Monkhorst in the usual manner for on-field misdemeanours, Long vigorously pursued this matter publicly.⁵¹ The Code of Conduct promised two years earlier had yet to be implemented by the AFL, leaving Long without any immediate redress.⁵²

There were more vociferous calls directed at the AFL from certain sections of the Melbourne press,⁵³ the footballing fraternity,⁵⁴ and Members of Parliament,⁵⁵ calling for regulation against racial sledging. The following public statement issued by the AFL Players' Association and former Federal Member of Parliament Phil Cleary was indicative of this opinion:

... it is our view that society's expectations have changed and that Aboriginal players such as Michael Long and Nicky Winmar have every right to expect 'white fella footballers' like the rest of Australia, post-Mabo, to be committed to the reconciliation process.⁵⁶

Several Indigenous players also recounted their experiences of racist

sledging during the 1995 season.⁵⁷ At times the debate merged with other criticisms of AFL regulation, such as the crackdown on wrestling and melees.⁵⁸ The Collingwood President again took a defensive line to support Monkhorst: ‘... there is no racism at Collingwood’.⁵⁹ Others suggested that Long would receive preferential treatment through a conciliation procedure under the draft Code.⁶⁰ The Collingwood Football Club disputed the Code’s fairness, and contemplated a legal challenge against the rule’s application.⁶¹

The extensive public debate and the promise of the AFL to regulate racial taunting led to the formal implementation of the Code; which provided for a conciliation procedure to resolve racial disputes. On 5 May 1995 images of a disconsolate Monkhorst (arms crossed) and Long (clenched fist resting underneath his chin) sitting either side of AFL Chief Commissioner Ross Oakley were depicted in the media after the first conciliation meeting.⁶² Immediate criticism of the AFL’s ‘behind closed doors’ approach followed,⁶³ alleging that the AFL was not ‘fair dinkum’ about regulating racial vilification.⁶⁴ The sombre nature of the press conference, and Long’s subsequent public comments, permitted in this case by a waiver of the standard AFL rule forbidding public comment on tribunal proceedings,⁶⁵ indicated disquiet over the official resolution of the matter:

I was hoping Monkhorst was coming out with a public apology. I didn’t know we weren’t to speak. I mean, Ross Oakley was speaking on behalf of the AFL. But I felt he was speaking on behalf of Collingwood, and he sort of left me on the outside ... ‘Well done, Damian, you’ve really done us proud’ — sort of a slap on the back or a kiss on the arse.⁶⁶

Subsequent to the inaugural conciliation procedure, there were several further developments which questioned the efficacy of the AFL’s regulatory response to racial vilification. In response to a series of new allegations of racist abuse after the Long/Monkhorst case, the AFL compiled a list of identifiable perpetrators of racist sledging which was distributed to each AFL club.⁶⁷ In the following week, a conciliation procedure was initiated by Richmond youngster Justin Murphy, leading to calls for a tougher stance on racial vilification from the AFL, and formal mediation by a member of the Human Rights and Equal Opportunity Commission.⁶⁸ In August 1995, the words ‘Sticks and stones may break my bones but names will never hurt me’,⁶⁹ with a picture of a

red and black child's dummy, appeared on a Collingwood banner in a match against Essendon. The club initially denied that the banner had racial connotations,⁷⁰ but substantial public criticism⁷¹ led to a tentative public apology. Two weeks later, West Coast footballer Chris Lewis alleged that during a scrimmage, Carlton player Greg Williams said, 'Get this black cunt off me'.⁷² The umpire asked Lewis if he wanted to pursue the matter and Williams was later summoned to conciliation proceedings under the Code. Despite his 'loss of memory' Williams apologised to the satisfaction of Lewis. Lewis was later fined \$2000 by the AFL for publicly commenting on the proceedings.⁷³ Finally, the AFL commenced an intensive advertising campaign in 1995 designed to educate the community on the evils of racism in sport. Using the analogy of 'binding' as central to the hand crafting of the leather football, the campaign targeted television and print audiences on the necessity to remove racism from AFL football. However, the issue of racial vilification by spectators remained unaddressed by the AFL, and was the subject of minimal public criticism during, and in the aftermath of the Long incident.

The Laws

In response to intensive community debates on racism both on and off the sporting field, two forms of regulatory control have been adopted to deal with racial vilification: the AFL Code of Conduct and the *Racial Discrimination Act* (Cth) 1975 as amended by the *Racial Hatred Act* (Cth) 1995. The former deals with incidents between AFL footballers, while the latter is of general application to the Australian community as Commonwealth law.

The AFL Code of Conduct

The Code makes it an offence for players, officials, employees and agents (including coaches, medical officers and others authorised to enter the playing arena) of any AFL club to 'threaten, disparage, vilify or insult another person on the basis of that person's race, religion, colour, descent or national or ethnic origin'.⁷⁴

The umpire or the player concerned must raise the matter with the AFL's Complaints Officer, who then arranges a conciliation meeting. If the matter is resolved to the satisfaction of the Officer, the offender will not be formally punished by the AFL: he will be eligible to win all AFL awards and will not receive a suspension as is commonly the case for breaches of AFL rules. If the matter remains unresolved, it is then referred

to the AFL tribunal for a formal hearing to be conducted in the same manner as conventional reportable incidents.⁷⁵ In this event, players can be suspended if found guilty under the Code, and fines of up to \$50 000 can be imposed on clubs unless it is established that the club took all 'reasonable steps' to prevent the behaviour.⁷⁶ The conciliation procedure is bypassed if the alleged offender has a prior record under the Code.⁷⁷ Conciliation proceedings remain confidential, and public comment on proceedings can lead to fines imposed by the AFL.⁷⁸ Proceedings are to be conducted by a nominee of the President of the Human Rights and Equal Opportunity Commission or of the AFL.

The Racial Hatred Act

It is unlawful for a person to do any act involving a distinction, exclusion restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life.⁷⁹

The *Racial Hatred Act (Cth)* 1995 was originally intended to impose both criminal and civil penalties for proven acts of racial vilification.⁸⁰ The Bill was vigorously debated in Parliament.⁸¹ and resulted in much polarised opinion, ultimately leading to the removal of its criminal clauses. The Act amends existing provisions of the *Racial Discrimination Act (Cth)* 1975⁸² which provides for conciliation to resolve allegations of racial discrimination in such matters as the provision of legal services the provision of land, housing and accommodation, the provision of goods and services and access to public facilities.⁸³

The Act subjects private communications to official inquiry, which are 'reasonably likely ... to offend, insult, humiliate or intimidate another person or group of people ... because of ... race, colour, or national or ethnic origin...'⁸⁴ to official inquiry and/or conciliation. Inquiries are initiated by the Race Discrimination Commissioner following an application from an aggrieved person, or by referral from the Human Rights and Equal Opportunity Commission.⁸⁵ Proceedings are held in private, without legal representation, and criminal sanctions can be imposed for non-appearance or the failure to disclose relevant information. During the inquiry the Commissioner shall make every effort to allow the

matter to be resolved through conciliation, and shall enable the parties to negotiate a settlement. Possible outcomes include declarations of unlawful conduct and an award of damages to the victim for harm caused. Declarations can be enforced or challenged by a certificate issued by the Commissioner in the Federal Court.⁸⁶

Of significance are the exemptions under the Act. Under s.18D certain behaviours are not unlawful if conducted in 'good faith'. These include acts of racial vilification in the course of the performance, exhibition or distribution of an artistic work; statements, discussions, publications or debates in the public interest or for genuine academic, artistic or scientific purpose; and fair or accurate reports or comments on events in the public interest or made with a genuine belief of truth. Additional provisions allow for employers to be made vicariously liable for the behaviour of their employees or agents, and the continued operation of existing state laws dealing with racial discrimination.⁸⁷

Discussion

Sport is not divorced from life, from the civic culture of a society, from its institutions and processes, its economic, legal and educational systems, its national politics and foreign relations.⁸⁸

It is evident that the actions of Winmar and Long have led to considerable public scrutiny over what was once a standard part of VFL/AFL football. The symbolic actions of Winmar, and the personal and political lobbying of Long, questioned the norm and generated a series of divisive debates which forced the AFL to adopt a formal procedure aimed at tackling the problem of racist speech directly. The experiences and statements of Nicholls, Farmer, Jackson and the Krakouer brothers demonstrate how traditionally, those on the receiving end of racial slurs were encouraged to accept the presence of racism, and to turn these acts of aggression and victimisation into ammunition or strategies in the interests of furthering the prescribed goals of the sport: 'winning at all costs'; complying with the standard tactics of the game; and focusing on the ball, rather than the opposition. Racial vilification was either an opportunity for non-Indigenous footballers to gain an advantage over their opponents, or an opportunity for Indigenous players to turn 'negatives' into 'positives'. Both these prescriptions were perpetuated and validated by all the actors—the players, the coaches, the administrators, the media and the audience.

Those on the receiving end of racist slurs were constructed and constricted by the logic of the strategies available to them in the social, cultural and regulatory milieu of the time. Only the shrewd, such as Syd Jackson (or his tribunal advocate), could equally gain a tactical advantage and 'turn the tables' on the standard methods of dealing with racist speech. However, this fraudulent reversal of fortune is anomalous and, as with acts of overt and violent retaliation in breach of the rules of football, continues to perpetuate the sanctity of the practice by turning the same 'negative' into a different, and dubious 'positive'. Jackson's actions, or other acts of violent retaliation to racist speech, ultimately generated little criticism of the practice or any formal attempt by football administrators to deal with the issue directly. Such retaliation was considered deviance itself. The broader milieu of racism and its denial effectively contributed to the maintenance of the status quo through silence and tacit consent to its normalised existence in VFL/AFL culture.

The actions of Winmar and Long necessitated a revision of the previously unquestioned sanctity of these naturalised practices on the sporting field. This paralleled broader political developments in dealing with racial hatred by the Commonwealth Parliament. Authoritative regulatory/legislative intervention was deemed necessary to either show to the community that football was leading the way in adopting proactive measures to eliminate racism in sport, or that football was following the lead of the Commonwealth in legislating to raise awareness of the problems of racism in the community.⁸⁹ In either case, the public gaze was directed towards intensive scrutiny of what was otherwise an acceptable tactic in AFL football. Both within and beyond the white line, community debate about the problem of racist speech was placed squarely on the social agenda.⁹⁰

The corresponding debates in the broader community helped to generate and maintain the momentum of scrutiny into racial vilification in football, and compelled the AFL to eventually act on the issue. The subsequent outpouring of opinion and fixed positions produced division between traditionalists and reformists. Invariably, those that read Winmar as an agitator implicitly favoured the uncritical acceptance and validity of the privileges of the sporting arena. By contrast, those that commended Winmar effectively raised the stakes. The newly affirmed undesirability of maintaining the illusion of the sports field as separate and immune from broader social trends which had continually recognised the marginal

status of Indigenous Australians since British colonisation was brought to the fore. The sanctity of Australian sport as the 'great equaliser' was invariably confronted by the politics of Winmar and Long's actions and the ensuing debate. The victims and the reformers had challenged the inviolability of the norms, ethics and practices hitherto accepted within our sporting tradition.

The parallels in the regulatory developments both on and off the sporting field are, however, almost too close. In both form and substance, the AFL Code of Conduct and the *Racial Hatred Act* are virtually identical. They have the same aims; they are drafted in essentially the same terms; they invoke the same informal conciliation procedures; they both have the intention of compelling the perpetrator to provide restitution for harms caused without invoking formal 'criminal' or 'punitive' individual penalties; both allow for vicarious liability and the imposition of fines on clubs or employers for failing to encourage behavioural change; both essentially reproduce existing laws governing 'offensive' speech/behaviour in their respective jurisdictions.⁹¹ Invariably, the laws have common limitations: complaints will generally be initiated by the victim, rather than through institutionalised, formal enforcement mechanisms; definitional problems exist, including the interpretation of a 'racially motivated act'; conciliation can be viewed as an overly informal 'quasi-legal' function, dealing with matters in a closed, unaccountable environment; the lack of criminal penalties consistent with other offences relating to language and speech may trivialise the harm caused by racial vilification, thereby deeming such activity as different from 'real' crimes such as assault or offensive behaviour; the focus on the issue of 'race' as the key element in the provisions can raise allegations of preferential treatment for certain groups, contributing to further social division. Each of these criticisms have been raised in relation to both laws.⁹²

In each case, Indigenous victims have had little direct say in the drafting, implementation or enforcement of the provisions. Once the debate generated sufficient public and official momentum, their voice in the political process was subsumed by the voices of authority and power within the sports administration and the official law-making structures. Long's protests about the AFL's handling of the first conciliation procedure is indicative of this point. Rather than altering the administrative structure and empowering Indigenous footballers on their own terms through direct political participation in the regulatory process, the actual outcome

in terms of AFL policy and practice merely shifted the goal posts. Long, Winmar, and all others who stand up and criticise the practice of racial vilification, must continue to comply with 'the rules of the game' as dictated by the structures and conventions of the AFL and its regulatory mechanisms. It is no longer the act of vilification per se which is normalised, but the way in which the AFL deals with the problem that perpetuates the silence of Indigenous footballers. Rather than turning a blind eye to the abuse from fellow athletes, Indigenous footballers must now turn a blind eye to the structures of the formal decision making and enforcement processes within the AFL bureaucracy.

The AFL Code and its Commonwealth equivalent are legal impositions. They stem from formalised institutional structures and decision-making mechanisms which comprise non-Indigenous 'experts' and administrators. Consultation with Indigenous footballers by the AFL has been documented,⁹³ but only after the first conciliation procedure involving Michael Long. This consultation process demonstrated that the absence of any direct Indigenous participation in the implementation of the Code's content and procedures, means that the issue becomes translated into a new discourse which reflects the languages and methodologies of law making and law enforcement, rather than the languages of racial victimisation and racial inequality. The stories of Indigenous victimisation and their suggestions for reform are converted into a new dialogue aimed at a new audience: one which is highly insulated from the realities and experiences of racial victimisation and one which needs to be seen to be doing something in response to the public debate and parallel developments beyond the sporting field. It is also arguable that this same process affects the Commonwealth laws on racial hatred. The Parliamentary debates on the *Racial Hatred Bill* illustrate the paucity of direct input into the legislative process, its methodology and enforcement procedures from Indigenous people and many other minority groups. Their views are presented to an extent, but are always, translated, converted, diluted and sanitised to satisfy the methodological and procedural requirements of the institutions charged with implementing these reforms. In both cases, we must seriously question whether the operation of the laws actually makes a substantive difference to victims of racial vilification, and on whose terms we judge this outcome.

Irrespective of the intentions of the rule makers, many are still highly critical of both the AFL and Commonwealth conciliation provisions and

their implementation. This stems directly from the way in which the provisions are enacted and enforced by the respective authorities. Several events during the 1997 AFL football season reinforce this point.⁹⁴ A highly-publicised incident involving Collingwood's Robbie Ahmat and Essendon's Michael Prior led to further debate and questioning of the effectiveness of the Code. Prior was cleared for allegedly calling Ahmat a 'dark cunt'. Prior continually claimed he had called Ahmat a 'dumb cunt', and central to this case was the confusion in gathering and presenting sufficient evidence to substantiate a claim under the Code in certain situations during the course of play.⁹⁵ This incident followed an extensively-publicised encounter between Footscray footballer Steve Kolyzniuk, and Melbourne Indigenous player Jeff Farmer.⁹⁶ The previous debates on racist speech were largely reconstituted and revisited in their various forms,⁹⁷ and the voice of Indigenous victims was prominent in the ensuing publicity.⁹⁸ The major difference was the focus on the content and application of the new rules, and the problems stemming from their ability to be enforced by the AFL. An additional development was the introduction of tentative debate on racist speech involving non-Indigenous victims, and gendered,⁹⁹ homophobic, or other slurs related to individuals on the sporting field.¹⁰⁰ The discussion of sledging as a tactic per se, was however still subsumed by the dominant debate over racist speech.

The majority of criticism in these later cases involved the problems of proving racial victimisation in the context of the sport, or the inadequacies of the punishments available under the conciliation procedure. These concerns are not surprising given the problems of the Code as outlined above. This, it is submitted, is an invariable consequence of the drafting and implementation of the laws and the lack of voice given to Indigenous people in formulating or contributing to the content of the Code.

Of equal concern is the absence of official action over the issue of racist speech by spectators, the subject of Nicky Winmar's original complaint. The AFL Code is specifically confined to incidents which occur on the football field. Racism by spectators, while situated in the stadium environment, is beyond the purview of formal AFL control, although the AFL could theoretically encourage the passage of stadium by-laws prohibiting the practice.¹⁰¹ The advertising campaign instigated by the AFL in 1995 represents a starting point for reforming the informal culture of spectatorship at AFL matches. The proliferation of Indigenous flags amongst Essendon spectators, a team central in guiding the reform

process through the AFL in support of Long, is another informal advancement stemming from the politicisation of the race issue.¹⁰² However, the 'success' of these measures is questionable, in absence of detailed research into crowd attitudes to racism before and after the public debates in the AFL. Such practices may be merely symbolic, rather than evidence of any real change in the attitudes of sports spectators to ethnic minorities in this country.¹⁰³

There are doubts as to whether the *Racial Hatred Act* would apply to spectators in the sports stadium. As a matter of law, it may be that the exemptions under s.18D preclude enforcement against sports spectators: the environment of the sports stadium and the performances therein may constitute 'artwork' from an aesthetic viewpoint; sport is a matter of public interest (perhaps the most compelling ground legally); racial sledging has historically been recognised in sporting parlance as 'fair comment'. These are all issues subject to judicial interpretation, if indeed they ever come before a court of law. In practical terms, it would be almost impossible for an aggrieved player or an offended spectator to initiate a complaint given the spatial density of the sports crowd. It would be far more expedient to allow rigorous police enforcement of existing 'offensiveness' statutes and by-laws, rather than attempt conciliation proceedings between rival individual and/or groups of sports fans.

Conclusions

There is a serious paradox which emerges from this discussion. On the one hand, the tendency of the AFL to transplant or replicate procedures governing racial hatred which are applicable to the community more generally reinforces the connection between sport and politics in this country. This can help to place the problem of racial vilification on the political agenda. However, until structural and procedural reforms in regulatory decision making encourage direct participation by Indigenous people, on their terms, the old problems of racial marginalisation and 'otherness' become redirected and reconstituted rather than resolved. On the other hand, despite a paucity of research on the issue, there may be considerable benefits which stem from greater cultural awareness of the problem of racist speech which has emerged in the 1990s. However, caution needs to be expressed on this point. Is cultural change substantive or symbolic? Are the public, or even Indigenous footballers, theoretically

and practically aware of what is required to create a more 'level playing' field both within and beyond sport? Are the regulatory or cultural responses to these public debates sufficiently proactive to eliminate the problem or is the problem one which can never be resolved? These contradictory messages raise more questions than they answer regarding the purview of law in the realm of sport and in the context of dealing with racial issues. AFL football is responsive to the problems of vilification, but the problem of evaluating the efficacy of these responses, and the reluctance of the wider legal processes to intervene beyond establishing a paradigmatic regulatory model for the AFL, may have achieved minimal substantive deterrence and few viable enforcement procedures which would aid in eliminating the practice. Further research on the enforcement of similar codes of conduct in other sports and the impact of the *Racial Hatred Act* since its proclamation from a victim perspective is necessary to assess the success of these measures.

NOTES:

- 1 A draft version of this article was presented at the Seventh International Conference of the Law and Literature Association of Australia, Northern Territory University, 19-21 July 1996. The authors would like to thank Manny Nicolosi and Brian Warren for assistance in the preparation of this article.
- 2 J Given, 'Red, Black, Gold to Australia: Cathy Freeman and the Flags: Sport! Changing the Angle', *Media Information Australia*, 75, 1995, pp. 46-56.
- 3 The question of race has arisen in relation to the potential for political protest by Indigenous Australians at the 2000 Olympics; see L Martin, 'IOC Warns of 2000 Hijack', *Age*, 26 Sept. 1996. On the issue of regulating racist speech in sport see N Parpworth, 'Football and Racism: a Legislative solution?' *Solicitors Journal*, 15 Oct. 1993, pp. 1016-7; S Greenfield and G Osborn, 'When the Whites Go Marching In? Racism and Resistance in English Football', *Marquette Sports Law Journal*, 6, pp. 315-35, 1996; C L Claussen, 'Ethnic Team Names and Logos — Is There a Legal Solution?' *Marquette Sports Law Journal*, 6, pp. 409-21, 1996. See also L Allison, ed., *The Politics of Sport*, Manchester University Press, Manchester, 1986; G Jarvie, ed., *Sport, Racism and Ethnicity*, Falmer Press, London, 1991. Notable events in recent times involving allegations of racism in sport include the Eric Cantona incident, a Nazi salute by Aston Villa footballer Mark Bosnich, an allegation by Swedish UEFA chief at a meeting in South Africa that 'the whole room was full of blackies, and it gets damned dark when they're sitting there together', and the withdrawal of golfer Fuzzy Zoeller's sponsorship by the K-Mart corporation after making the following statement about American Tiger Woods on national television: 'The little boy is driving well . . . Enjoy it. And tell him not to serve fried chicken next year. Got it? Or collard greens or whatever the hell they serve'. See *Age*, 16 Nov. 1996; T Boswell, 'Nothing Fuzzy about Jibe', *Age*, 25 Apr. 1997; 'Zoeller Pulls out 'to Make Things Right with Tiger', *Age*, 25 Apr. 1997.
- 4 K Laster and V Taylor, 'Law for our Multicultural Society?: No Worries', in H Selby, ed., *Tomorrow's Law*, Federation Press, Sydney, 1995, pp. 210-34.
- 5 N Elias and E Dunning, *Quest For Excitement: Sport and Leisure in the Civilizing*

- Process*, Blackwell, Oxford, 1986.
- 6 See D S Caudill and S J Gold, eds, *Radical Philosophy of Law: Contemporary Challenges to Mainstream Legal Theory and Practice*, Humanities Press, New Jersey, 1995; A Hunt, *Explorations in Law and Society: Toward a Constitutive Theory of Law*, Routledge, New York, 1993; C R Lawrence III, M J Matsuda, R Delgado and K Williams Crenshaw, *Words that Wound: Critical Race Theory, Assaultive Speech, and the First Amendment*, Westview Press, Boulder, 1993; R Quinney, *Class, State and Crime: On the Theory and Practice of Criminal Justice*, McKay Publishers, New York 1980; I Taylor, P Walton, and J Young, *The New Criminology: For a Social Theory of Deviance*, Routledge, London, 1973; C Smart, *Feminism and the Power of Law*, Routledge, London, 1989.
 - 7 R W Lewis, 'Football Hooliganism in England before 1914: A Critique of the Dunning Thesis', *International Journal of the History of Sport*, 13, 1996, pp. 310-39.
 - 8 E Dunning and K Sheard, *Barbarians, Gentlemen and Players: A Sociological Study of the Development of Rugby Football*, Martin Robertson and Co, Oxford 1979.
 - 9 Hunt, *Explorations in Law and Society*.
 - 10 See 'A Lie for an Eye?' *Age*, 2 May 1997 outlining how former Carlton footballer Wayne Johnston was often erroneously called a 'black little wog'.
 - 11 See generally 3 Rex and D Mason, eds, *Theories of Race and Ethnic Relations*, CUP, Cambridge, 1986.
 - 12 C Tatz, *Obstacle Race: Aborigines in Sport*, NSWUP, Sydney, 1995, p. 26.
 - 13 Tatz, *Obstacle Race*, p. 155, quoting Collingwood player Mick McGuane on the issue of racist taunts in AFL football.
 - 14 Tatz, *Obstacle Race*, p. 157.
 - 15 Tatz, *Obstacle Race*, p. 152.
 - 16 Tatz, *Obstacle Race*, pp. 160-7. With the introduction of the Fremantle Dockers into the AFL competition in 1995, plus more rigorous recruitment of Indigenous players by clubs in Melbourne, Brisbane, Sydney, Adelaide and Perth, it is estimated at the time of writing that total numbers could be between 80 and 90.
 - 17 Tatz, *Obstacle Race*, p. 167.
 - 18 J Main and R Holmesby, *The Encyclopedia of League Footballers: Every AFL/VFL Player Since 1897*, Wilkinson Books, Melbourne, 1992, p. 324; M Flannagan, 'Black Magic' in AFL, *100 Years of Australian Football*, Viking Press, Melbourne, 1996, p. 353.
 - 19 S Hawke, *Polly Farmer; A Biography*, Fremantle Arts Centre Press, Fremantle, 1994, pp. 333-4, 346.
 - 20 Hawke, *Polly Farmer*, p. 130.
 - 21 Hawke, *Polly Farmer*, p. 25.
 - 22 Tatz, *Obstacle Race*, p. 352; Flannagan, 'Black Magic'.
 - 23 J Main and R Holmesby, *Carlton: The Greatest 100*, Crossbow Publishers, Jolimont, 1994, pp. 242-4.
 - 24 Tatz, *Obstacle Race*, p. 157.
 - 25 M Gawenda, 'Blacks in the Big League', *Age*, 26 Apr. 1982.
 - 26 Gawenda, 'Blacks in the Big League'; see also Main and Holmesby, *The Encyclopedia of League Footballers*, p. 239. The most famous Indigenous footballer to have a well documented history of violence on the football field was Robert Muir, who is estimated to have spent of 114 senior matches in the VFL and other senior Australian codes on the sidelines due to suspension. Retaliation to racist taunting is clearly an element in some of Muir's violent history. However, given the extreme nature of Muir's recidivism, it is posited that responses to racism and 'white line fever' may be equally at play in his case: see Main and Holmesby, *The Encyclopedia of League Footballers*, p. 313; J Dyer and B Hansen, 'The Man with a Hair-trigger Rage' in J Dyer and B Hansen, *Captain Blood's Wild Men of Football*,

- vol. 1, Brian Edward Hansen, Cheltenham, 1993.
- 27 A common criticism of the Krakouer brothers, who often visited their family in Mt Barker, 350 km from Perth, without informing their coach: see Gawenda, 'Blacks in the Big League'. See, G Wright, 'Winmar goes Hunting, Fishing', *Sunday Age*, 9 May 1993.
- 28 Gawenda, 'Blacks in the Big League'.
- 29 Tatz, *Obstacle Race*, p. 358.
- 30 N Place, 'Winmar: I'm Black and Proud of It', *Sunday Age*, 18 Apr. 1993. It was also reported that Winmar was spat on by angry supporters as he left the field.
- 31 For the array of visual depictions of the incident in the press and sports literature, see Editorial, 'One Man's Timely Protest', *Sunday Age*, 25 Apr. 1993; G Wright, 'Club and Star in Contract Dispute: Saints Dump Winmar', *Sunday Age*, 25 Apr. 1993; 'Racism: How Guilty are We?', *Sunday Age*, 9 May 1993; C Tatz, 'Heart, not Colour, is What Sets apart a Winner', *Age*, 28 Apr. 1995; C Tatz, 'Pointing out a Way to Survive Life's Hardships', *Age*, 5 May 1995; S Reilly, 'Black Backlash', *Age*, 13 May 1995; AFL, *100 Years of Australian Football*, p. 350. See also G Linnell, 'Time for Racism to be on Report', *Age*, 19 Apr. 1993.
- 32 See G Denham, 'Saints Find a Quick Solution on Doorstep', *Age*, 19 Apr. 1993.
- 33 The *Age/Sunday Age* reported a total of 21 articles during the period 25 Apr–16 May 1993 on Winmar's contractual dispute with the St Kilda club. During the same period, the issue of racism in football, which encompassed both Winmar's actions and the events surrounding Allan McAlister and the Indigenous communities in the Northern Territory, attracted 23 articles, most in editorial format, three formal editorials and two letters to the editor. Only eleven of these covered the issue of racist speech on the football field or by spectators.
- 34 Linnell, 'Time for Racism to be on Report'; Editorial, 'Racism Should be Made Reportable', *Age*, 20 Apr. 1993; P Smith, 'Racism On or Off the Field Cannot be Condoned', *Age*, 24 Apr. 1993; C Loughnan, 'AFL Should Act against Racism', *Age*, 27 Apr. 1993.
- 35 P Smith, 'Racism and Winning: It's all in the Game', *Age*, 20 Apr. 1993; N Way, 'Racism a Blight on Both Sides of Fence', *Sunday Age*, 25 Apr. 1993.
- 36 G Ryle, 'Winmar Stands for the Nation's Future, says Bolkus', *Age*, 20 Apr. 1993.
- 37 M Sheehan, 'Worsfold Regrets He used Racist Remarks', *Sunday Age*, 25 Apr. 1993.
- 38 Smith, 'Racism and Winning'; Way, 'Racism a Blight on Both Sides of Fence'.
- 39 Sheehan, 'Worsfold Regrets He used Racist Remarks'.
- 40 M Sheehan, 'Shaw's Attitude is out of Date', *Sunday Age*, 25 Apr. 1993; S Madden, 'Crowd Behaviour just a Matter of "Mud" in the Eye', *Age*, 5 May 1993.
- 41 P Smith, 'Apologetic McAlister Warns Footballers on Racism', *Age*, 27 June 1993; P Smith, 'League Clamp on Racist Taunts', *Age*, 28 Apr. 1993; M Daly, 'Act on Racist Taunts, Clubs Told', *Age*, 27 Apr. 1993.
- 42 P Smith, 'Racism and Winning'.
- 43 T Burchill and I Munro, 'Racial Taunts Part of the Game, say Footy Fans', *Sunday Age*, 25 Apr. 1993; Madden, 'No Easy Answer'.
- 44 G Alcorn, 'Land Council Bans McAlister Visit', *Age*, 6 May 1993; see generally, G Alcorn, 'McAlister's Slim Hope of Spotlight Slips Away', *Age*, 11 May 1993; M Sheehan, 'Big Al's Odyssey', 16 May 1993; M Sheehan, 'On the Road for Big Al's Odyssey'; G Alcorn, 'Making the Colliwobbles even Worse', *Age*, 12 May 1993; G Alcorn, 'Giving Footy Racism the Boot', *Age*, 10 Feb. 1994. There was also a formal rebuke of McAlister from the then Prime Minister Paul Keating. See N Johnston, 'PM rebukes Collingwood Chief', *Age*, 7 May 1993.
- 45 See N Brady and A Messina, 'Tiger Chief Sorry over "Joke"', *Age*, 11 May 1993.
- 46 R Connolly, 'Footy Racism Flares Again', *Sunday Age*, 30 May 1993; Editorial, 'Up

- Where, Cazaly?', *Age* 2 June 1995; Tatz, *Obstacle Race*, p. 158.
- 47 Tatz, *Obstacle Race*, p. 158.
- 48 R Stapleton, 'Michael Long's True Colours', *Inside Sport*, 43, July 1995, p. 70.
- 49 S Oldfield, 'Long's Abuse Claim to Test Code of Conduct', *Age*, 28 Apr. 1995.
- 50 A Mithen, 'Race Taunt Spurs move to Put Code into Force', *Age*, 29 Apr. 1995; Stapleton, 'Michael Long's True Colours', p. 68.
- 51 Long received much support from the Essendon Football Club in pursuing the issue on his behalf. See G Denham, 'Dons to Act on Long Racism Complaints', *Age*, 1 May 1995.
- 52 Mithen, 'Race Taunt Spurs Move'.
- 53 See, Editorial, 'Giving Racism the Boot', *Age*, 29 Apr. 1995; P Smith, 'Racism Claim Calls for Action', *Age*, 29 Apr. 1995.
- 54 G Walsh and R Connolly, 'Racist Slur Row: Pie Boss: There is No Proof', *Sunday Age*, 30 Apr. 1995; S Linnell, 'Call to Leave Football Matters to Tribunal', *Age*, 3 May 1995.
- 55 Denham, 'Dons to Act'.
- 56 Denham, 'Dons to Act'.
- 57 'Three Aboriginal Players Tell of Their Experience of Racism', *Sunday Age*, 30 Apr. 1995; S Linnell, 'New Bomber Abuse Claim', *Age*, 2 May 1995; S Newman, 'Sledging was Just as Bad in My Day', *Age*, 5 May 1995; R Walls, 'A Long Line of Aboriginal Talent since Jackson's Days', *Age*, 5 May 1995.
- 58 A Mithen, 'Monkhorst Decision expected Today', *Age*, 5 May 1995.
- 59 'Magpie Boss defends Star Ruckman', *Sunday Age*, 30 Apr. 1995; Walsh and Connolly, 'Racist Slur Row'.
- 60 See P Smith, 'Football Media put Wrong Man in Box', *Age*, 2 May 1995.
- 61 S Linnell, 'Pies in Legal Threat over Monkhorst', *Age*, 4 May 1995.
- 62 It is arguable that this image is just as significant as the image of Winmar in evoking feelings about the AFL's dealings with the racism issue. See 'Australians Face the Great Divide', *Sunday Age*, 12 May 1995; AFL, *100 Years of Australian Football*, p. 362.
- 63 Editorial, 'Play the Game', *Age*, 6 May 1995; P Smith, 'League's Silence on Long leaves it Looking Meek', *Age*, 6 May 1995; Letter to the Editor, 'Why the AFL's Moves on Racism need Real Teeth', *Age*, 10 May 1995.
- 64 A Mithen and S Linnell, 'AFL Accused as Racism Row Widens', *Age*, 6 May 1995.
- 65 G Walsh, 'No Gag, says Oakley', *Sunday Age*, 7 May 1995; 'Monkhorst Didn't Say Sorry; Long', *Age*, 9 May 1995; A Mithen, 'No Apology from Pie: Long', *Age*, 9 May 1995; S Reilly and A Browne, 'Monkhorst Apologises to Long for Abuse', *Age*, 10 May 1995; P Smith, 'Fiasco has Lessons for All in Football', *Age*, 10 May 1995. See also S Linnell, 'Clubs to Face Fines on Leaks', *Age*, 21 Mar. 1996; P Smith, 'The Boss Slaps a Clamp on Loose Lips', *Age*, 21 Mar. 1996.
- 66 Stapleton, 'Michael Long's True Colours', p. 73.
- 67 A Mithen and S Reilly, 'Aboriginal Players Still Copping Taunts, says Bears' McLean: Racism Row Flares Again', *Age*, 8 May 1995; 'Magpie Fans Accused of More Racial Taunts', *Sunday Age*, 12 May 1995; N Place and AAP, 'Magpie Crowd Accused', *Sunday Age*, 14 May 1995; P Smith, 'Six Accused of Sustained Racial Abuse', *Age*, 17 May 1995; A Mithen and P Smith, 'Clubs to be Given Names on Racial Abuse List', *Age*, 18 May 1995.
- 68 A Mithen. 'Murphy, Yeates Call for Tough Race Code', *Age*, 20 May 1995. This incident led to calls from Indigenous players to form a support group to assist young AFL players; A Mithen, 'Moves for an Aboriginal Players' Group', *Age*, 11 May 1995; R Fitzgerald, *The Footy Club: Inside the Brisbane Bears*, UQP, Brisbane, 1996, p. 66.
- 69 P Smith, 'Angry AFL Queries Banner', *Age*, 15 Aug. 1995.

- 70 Smith, 'Angry AFL Queries Banner'.
- 71 P Smith, 'Top Pie Fails to Counter Racism', *Age*, 14 Aug. 1995.
- 72 See S Linnell and G Denham, 'Lewis Accuses Williams of Racist Abuse', *Age*, 29 Aug. 1995; G Denham and S Linnell, 'Williams Abused Me: Lewis', *Age*, 29 Aug. 1995; Fitzgerald, *The Footy Club*, p. 137.
- 73 Linnell and Denham, 'Lewis accuses Williams'. Williams's manager was reported to have said: 'As far as he's concerned it just didn't happen'. Denham and Linnell, 'Williams Abused Me'; S Linnell, 'Williams in Clear after Apologising', *Age*, 31 Aug. 1995; S Linnell and G Denham, 'Lewis Faces Fine over Comments', *Age*, 30 Aug. 1995.
- 74 AFL, *One Game for All Australians*, promotional leaflet on the complaints process for racial and religious vilification, AFL, Melbourne, s.(a); Denham and Linnell, 'Williams Abused Me'.
- 75 AFL, *One Game for All Australians*, s. (d)(i). Under s.(g) of the code, no evidence of conciliation procedures is admissible at the tribunal hearing.
- 76 AFL, *One Game for All Australians*, ss. (l)- (m); S Linnell, 'Two AFL Race Cases Kept Confidential', *Age*, 4 Oct. 1995; Denham and Linnell, 'Williams Abused Me'.
- 77 AFL, *One Game for All Australians*, s. (e); Fitzgerald, *The Footy Club*, p. 66.
- 78 This is not expressly written into the code, but is implied by s(g) and is standard policy within the AFL regarding tribunal proceedings and the implementation of penalties.
- 79 *Racial Discrimination Act (Cth)* 1975, s.9.
- 80 The original intention of the *Racial Hatred* Bill was to amend the *Crimes Act (Cth)* 1914 and prescribe criminal penalties for threats made to people on the grounds of their race, colour or national or ethnic origin. See M Lavarch, *Racial Hatred Bill 1994: Explanatory Memorandum*, Commonwealth Government Printer, Canberra, 1994, pp. 4-8. These proposals were removed from the Act after Parliamentary debate on the Bill. See generally, K Eastman, 'Drafting Vilification Laws: Legal and Policy Issues', *Australian Journal of Human Rights*, vol. 1, pp. 285-98, 1994; I Freckelton, 'Censorship and Vilification Legislation', *Australian Journal of Human Rights*, vol. 1, pp. 327-52, 1994.
- 81 See *Hansard*, House of Representatives, vol. 194, 1994, p. 956; vol. 197, 1994, pp. 2329; 2921-5, 3105; vol. 198, 1994, pp. 3487-512, 3336-92, 3408-63; vol. 201, 1995 p. 474; no. 1, 1995, pp. 319-23; no. 3, 1995, pp. 1071-2; no. 4, 1995, pp. 1577-9; no. 12.. 1995, pp. 665; 945-6. *Hansard*, Senate, vol. 168, 1995, pp. 3276. 81; vol. 172, 1995, pp. 1307-08; no. 4, 1995, pp. 1390; 1479; 1561; 1606; no. 5, 1995, pp. 1954-7; 1734-40; 1748-62; 1765-8; 1770-3; no. 12, 1995, pp. 166-72; 210-44; 303-29; 359-65. The issue of racism in sport has also been the subject of Parliamentary scrutiny in recent years. See *Hansard*, Senate, vol. 171, 1995, pp. 614-5, 628.
- 82 References will refer to the sections in the *Racial Discrimination Act*.
- 83 *Racial Discrimination Act (Cth)* ss. 10-16; see also A D Trlin, 'The Racial Discrimination Act 1975: Provisions and the Receipt and Outcome of Complaints', *Australian Journal of Social Issues*, 19, 1984, pp. 245-60; Eastman, 'Drafting Vilification Laws'; Freckelton, 'Censorship and Vilification Legislation'.
- 84 *Racial Discrimination Act (Cth)*, s. 18C, s. 25Q.
- 85 *Racial Discrimination Act (Cth)*, ss. 22-24.
- 86 *Racial Discrimination Act (Cth)*, ss. 240 (4); 25Q; 25Z, 25ZB, 27-27F; Trlin, 'The Racial Discrimination Act', p. 248.
- 87 *Racial Discrimination Act (Cth)*, ss. 18E-18F.
- 88 Tatz, *Obstacle Race*, p. 342.
- 89 Eastman, 'Drafting Vilification Laws'; Freckelton, 'Censorship and Vilification Legislation'.

- 90 This finding accords with the work of Agozino, which compares the nature of the concept of punishment as implemented in sport, with the punitive nature of most criminal justice administration: B Agozino, 'Football and the Civilizing Process: Penal Discourse and the Ethic of Collective Responsibility in Sports Law', *International Journal of the Sociology of Law*, 24, pp. 163-88, 1996.
- 91 *Summary Offences Act (Vic)* 1966.
- 92 This was the common tenor of the Parliamentary debates on the issue (see above n. 90). Linnell, 'Two AFL Race Cases'; P Smith, 'Inconsistency Lowers Conduct Code to the Level of the Absurd', *Age*, 30 Aug. 1995; P Smith, 'Act now to Stamp Out a Blight on the Game', *Age*, 29 Aug. 1995. See also Stapleton, 'Michael Long's True Colours'; Tatz, *Obstacle Race*; P Smith, 'Some still see Black and White as Victim becomes the Villain', *Age*, 31 Aug. 1995.
- 93 Fitzgerald, *The Footy Club*, pp. 66-7.
- 94 S Linnell, 'League Plan to Identify Racists', *Age*, 22 Apr. 1997; P Smith, 'Suspend Offenders and End the Taunts', *Age*, 22 Apr. 1997.
- 95 R Nicholson, 'Ban Taunt Replays', *Sunday Herald-Sun*, 4 May 1997; R Nicholson, 'End of a Long Week', *Sunday Herald-Sun*, 4 May 1997; H Leigh, 'Race Slur Doubts', *Sunday Herald-Sun*, 4 May 1997. A Browne, 'Bomber to Face Race Probe', *Age*, 26 Apr. 1997; P Smith, 'Spark Ignites Racial Fire — Battle has Just Begun', *Age*, 26 Apr. 1997; R Connolly, 'Question Mark on Racial Hearing', *Sunday Age*, 27 Apr. 1997; L Pearce, 'Che backs Prior', *Sunday Age*, 27 Apr. 1997; Unauthored, 'A 'Yapper' not a Racist, says Shaw', *Sunday Age* 27 Apr. 1997; R Connolly, 'Ahmat Message Straight from the Heart', *Sunday Age*, 27 Apr. 1997; G Bernard, 'Ahmat, Prior 'Victims' of Racism' *Australian*, 30 Apr. 1997; S Linnell, 'Dons Hit AFL on Racism Handling', *Age*, 30 Apr. 1997.
- 96 S Linnell, 'Footballers Speak out on Racial Abuse', *Age*, 23 May 1997; S Linnell, 'Name Offenders, say Players', *Age*, 23 Apr. 1997; P Smith, 'Coaches Must Come Out against Taunts', *Age*, 23 Apr. 1997; S Linnell, 'League Plan to Identify Racists'; P Smith, 'Suspend Offenders and End Taunts'.
- 97 R Hinds, 'The Past: Unseen and Unheard', *Sunday Age*, 27 Apr. 1997. See also J Magnay, 'Sponsors Come to the Party on Racism', *Age*, 25 Apr. 1997; S Linnell, 'Landmark Racism Hearing', *Age*, 24 Apr. 1997; S Linnell, 'Busse Threat to Clubs', *Age* 25 Apr. 1997; P Smith, 'Cockatoo-Collins, Curley Both Winners', *Age*, 25 Apr. 1997, involving Western Bulldogs' defender Todd Curley who was cited by the tribunal for allegedly vilifying Melbourne's David Cockatoo-Collins after conciliation proceedings broke down. See also P Smith, 'Race Rule Changes include Heavy Fines', *Sunday Age*, 1 Aug. 1997; S Reilly, 'Jarman, Merenda Settle Dispute', *Sunday Age*, 1 Aug. 1997.
- 98 R Connolly, 'The Revolutionary', *Sunday Age*, 27 Apr. 1997; M Ray, 'Ready to Take a Stand', *Sunday Age*, 27 Apr. 1997; M Davis, 'Aborigines Want Racism Action', *Australian*, 23 May 1997; M Long, 'The Pain of Playing the Waiting Game', *Age*, 23 May 1997.
- 99 Editorial, 'Footballs Dirty Mouths', *Age*, 2 May 1997; P Bone, 'Taking the 'c' out of Football', *Age*, 2 May 1997.
- 100 J Niall, 'Barracking's Lingo Turns a Different Colour', *Sunday Age*, 27 Apr. 1997
- 101 I Warren 'An Air of Uncertainty: Private Security Regulation in Victoria', *Deakin Law Review*, vol. 2, 1995, pp. 223-53; *Melbourne Cricket Club Regulations (Vic)*.
- 102 See Niall, 'Barracking's Lingo Turns a Different Colour'. Ironically, this informal development occurs at a time when the National Soccer League seems intent on continuing the push to prohibit displays of ethnic identity in Australian soccer, through the banning of ethnic flags, colours and team emblems.
- 103 Laster and Taylor, 'Law for our Multicultural Society?'