

Trying Times: Collective Bargaining In Australian Rugby Union

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In 1995 Australian rugby confronted a major crisis. It was part of a consortium which had secured a lucrative television contract with Rupert Murdoch's News Corporation. It faced the prospect, however, of virtually all its star payers being attracted to play with the World Rugby Corporation. This problem was solved by the Ferrier letter of 16 August 1995. The Australian Unions agreed to 95 per cent of the television income to be distributed to players at the 'direction' of a yet to be formed players' association. During 1995 and 1996 there were a series of disputes between the Unions and the Rugby Union Players' Association concerning this direction. In late 1996 the players' association initiated legal proceedings to enforce its rights under the Ferrier letter. The threat of a possible favourable decision, especially after a players' association victory on an interim matter concerning the security of costs, induced the Unions to negotiate a collective bargaining agreement with the players' association. An agreement was finalised in October 1997. This article examines and analyses the various twists and turns associated with these events.

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In their seminal work *Industrial Democracy* Sidney and Beatrice Webb wrote 'It was the business of the employer to buy "labor" in the cheapest market, and that of the workman to sell it in the dearest. It followed that the only criterion of justice of any claim was ability to enforce it, and that the only way by which the workman could secure better conditions of employment was by strengthening their strategic position against the employer.'¹

Employers are more likely to grant concessions to workers, either individually or collectively—in negotiations with worker associations or unions — during periods of high demand; when they compete more vigorously with each other for (relatively) limited supplies of labour. During such periods, and focusing on collective determinations, it is the job of a union to extract as many concessions as it can for members — not just in the short term, but for the medium to longer term — and to secure

or entrench its organisational base to continue its representational role on behalf of members.

In the area of professional team sports employers are strategically vulnerable when rival leagues compete for players.² One such occasion occurred in 1995 when the 'establishment' Australian and state (New South Wales, Queensland and Australian Capital Territory³) Rugby Unions found themselves caught up in a bidding war for players with a mooted World Rugby Corporation. Events in this period are complicated by rugby union being in transition from an amateur to a professional code, and a similar battle in rugby league between the Australian Rugby League and 'Super League'.

The players held a series of meetings in deciding which of the rival organisations they would play for. This brought into being a nascent players' organisation with the appointment of leaders, or spokespersons, to provide advice and determine the 'best' course of action to be pursued in negotiating with the two rugby organisations. In due course the Rugby Union Players' Association was formed.

The 'establishment' Union defeated the World Rugby Corporation in securing the services of players. On 16 August 1995 Ian Ferrier, on behalf of the various Unions, signed a letter which, amongst other things, guaranteed players 95 per cent of the Australian Unions' share of television revenues of proposed new competitions. The television contract had a ten year life, with a five year option. The 95 per cent share of the television revenue would be disbursed 'in accordance with the Players' Association Direction'.

The signing of the Ferrier letter, together with developments in other rugby union nations, resulted in the demise of the World Rugby Corporation. With their rival eliminated the Australian Unions, during the latter part of 1995 and continuing into 1996, sought to escape from their 'obligations' under the Ferrier agreement. In the latter part of 1996 the players' association initiated proceedings before the Supreme Court of New South Wales to enforce the August 1995 deal. Such action induced the Unions to enter into discussions concerning a collective bargaining agreement to govern the employment of players. Following a player association victory on an interim matter concerning the security of costs a deal was eventually signed on 8 October 1997. This agreement not only extended benefits to players — fleshing out the 'bare bones' of the Ferrier letter — but also served to strengthen the position of the players'

association to act as a bargaining agent on their behalf.

This article will examine and analyse the various twists and turns associated with these events — of how the Rugby Union Players' Association capitalised on the strategic vulnerability of the Australian Unions.

The Rugby War and the Ferrier Agreement

Rugby Union has traditionally been an amateur sport — though in different parts of the world amateurism has been honoured more in the breach than the observance. In 1994 Australian and state Rugby Unions placed pressure on the International Rugby Football Board to change its rules on amateurism.⁴ The Australian Rugby Union, in 1995, established trust funds — in the range of \$25 000 to \$80 000 — for the 'Wallabies' (Australia's international representatives) which 'were designed to preserve their amateur status'.⁵

Amateurism has always made rugby union vulnerable to the loss of star players to the 'filthy lucre' offered by professional rugby league clubs.⁶ Such fears were exacerbated by developments which occurred in rugby league in 1995. Rupert Murdoch's News Corporation introduced Super League, in an attempt to take over the running and administration of rugby league worldwide, in providing a product for cable and pay television. In Australia this resulted in a bitter struggle between Super League and the Australian Rugby League, for both clubs and players.⁷

It was feared that many of rugby union's leading players would be induced to switch codes, in response to the substantial sums of money on offer to players as a result of the Super League war. In an effort to overcome such problems, a newly formed southern hemisphere consortium, South Africa New Zealand Australia Rugby, announced in Johannesburg on 23 June 1995, prior to the commencement of the Rugby World Cup, that it had signed a ten year agreement (with a five year option) with Rupert Murdoch's News Corporation for US \$550 million. The southern hemisphere consortium would provide two products for News Corporation. The first was a Super 12 competition of five regional teams from New Zealand, four from South Africa and three from Australia. The second was a 'Tri-Nation' series between the three countries. At a meeting in Paris on 27 August 1995 the International Rugby Football Board brought amateurism to an end.

While the newly formed consortium may have negotiated a deal with News Corporation it had not bothered to advise players, or, more

significantly, sign them to contracts. In addition, a newly formed body called the World Rugby Corporation entered the market for players, and secured their signatures with the offer of 'generous' Super League type contracts. A document in mid-August 1995 maintained that the World Rugby Corporation had signed 129 of South Africa's leading players, 70 plus in Australia, more than 100 in New Zealand and France respectively, teams from Scotland and Wales, and was proceeding with signings in England and Wales.⁸ The honouring of these contracts, however, was conditional on \$US100 million being deposited in a trust account of Ernst and Young by 22 November 1995, on the securing of television and sponsorship contracts 'sufficient for the Company to meet its contractual obligations'.⁹ The World Rugby Corporation sought to have Kerry Packer's PBL bankroll its operation.

The southern hemisphere consortium responded with the respective Unions placing pressure on players to desert the World Rugby Corporation. Both the South African and New Zealand Unions experienced success in their quest. New Zealand players agreed to return to the fold following an agreement from its Union, amongst other things, to 'consult with the Players' Representatives as to the distribution of up to 66 per cent of the television proceeds receivabl[e] from Newscorp. The arrangement to be reviewed with the Players' Representatives in three years time.'¹⁰

In Australia a six-hour meeting was held of approximately 70 players at the Park Royal Hotel, Darling Harbour, Sydney on 10 August 1995 to consider which of the rival organisations they should join. At that meeting a six person player committee was formed. It comprised Mark Harthill (chair), George Gregan, Matthew O'Connor, John Eales, Tony Dempsey and Tomo Boston. Its functions were to 'further assess the options that are currently before' players and 'report back _ in two weeks time after further negotiations with [the rival Union] organisations'.¹¹

On 11 August Mark Harthill and Tony Dempsey were involved in a meeting with Phil Harry, president of the Australian Rugby Union, and Ian Ferrier, chairman of the New South Wales Rugby Union and a member of the Australian Board. Representatives of Kerry Packer's PBL were in attendance at that meeting. They informed Harthill and Dempsey that PBL had decided to withdraw its financial support for the World Rugby Corporation. The major reason for PBL's decision was a realisation that increasing numbers of South African, and to a lesser extent Australian,

players wanted to extract themselves from their World Rugby Corporation contracts and return to the 'establishment' Unions. PBL, for its part, did not want to become involved in another Super League type struggle for players. It gave an undertaking not to enter into any legal actions against players to enforce the World Rugby Corporation contracts. Its departure from the scene was apparently conditional — a condition which it is difficult to know how it could enforce—on the negotiation of a satisfactory peace deal between players and the Australian Unions.¹²

The departure of PBL served to undermine the bargaining power of Harthill and Dempsey in their negotiations with Harry and Ferrier. During the discussions the player representatives circulated documents that the World Rugby Corporation was alive and well — a South African magnate Johann Rupert would fill the financial vacuum created by the departure of PBL. Whether because of a calculation that Rupert would revitalise the World Rugby Corporation, or because of the need to bring a quick and speedy end to a major crisis which had wracked Australian (and world) rugby, Harry and Ferrier were prepared to broker a deal with Harthill and Dempsey.¹³

In exchange for players relinquishing their rights under World Rugby Corporation contracts Harthill and Dempsey asked the Unions to support the establishment of a players' association, provide it with a \$10 000 loan repayable in twelve months, ensure that the Unions alter their constitutions to include two player association members as directors on their respective executives/boards, appoint two player association members to tour committees, and give an undertaking that there would be no retribution against players who had signed World Rugby Corporation contracts. Harry and Ferrier readily agreed to these requests.

The only part of the 'deal' where there was degree of fluidity, or 'dickering', was over the distribution of News Corporation's television revenue. At the time of these negotiations it was anticipated that Australia's share of this revenue for 1996 would be in the order of \$13 million. An initial draft agreement, dated 11 August 1995, stated that the Australian Rugby Union would 'consult with the Players' Association as to the distribution of more than 90 per cent of the television proceeds' from News Corporation. Hand-written notes on this draft indicate Harthill and Dempsey wanted 'consult' changed to 'agree', queried the 90 per cent figure (they wanted more), it should be 'gross television proceeds' rather than 'television proceeds' and, most significantly, the distribution

of revenue is 'to be determined by [the] Players' Assoc[iation]'.¹⁴

A second draft dated the same day says the Unions 'assent with the players' association direction as to the distribution of more than 90 per cent of the television proceeds net of commission (95 per cent in the first year) ... ([and] this should not be seen as limiting what would be a reasonable income for players in the future)'. Hand-written notes substituted 'agree' for 'assent' and raised the issue of the payment of officials, coaches, doctors and support staff.¹⁵ A subsequent draft signed by Harry and Ferrier on 12 August replaced 'assent' with 'agree'. It was silent, however, concerning payments to non-playing or support staff.¹⁶

A letter signed by Phil Harry on 16 August stated that the Unions agreed to 'distribute 95 per cent of all television proceeds (Net of Commission) _ in accordance with the Players' Association Direction'. It also said 'the remaining 5 per cent to be distributed for youth and junior rugby development', with the payment of non-playing or support staff being the responsibility of the Unions, implicitly, from other sources of revenue.¹⁷ The clause concerning support staff was deleted from a final document signed by Ian Ferrier,¹⁸ dated the same day, because of concern by the Unions that such staff would be put out by being informed about the source of their payments from media reports. Ferrier wrote a separate letter to Tony Dempsey, who had emerged as the players' major negotiator and spokesperson, that the Unions would remunerate support staff.¹⁹

The Problem of Enforcement

On 8 September 1995 the Rugby Union Players' Association²⁰ wrote to Ian Ferrier outlining its direction concerning the distribution of television income for 1996, per the letter he had signed on 16 August. It requested \$57 000 to be forwarded to the players' association, \$4.9 million to the 24 Wallabies signed with the Australian Rugby Union, and 'the remaining \$6.543 million to senior rugby players playing with the three state Unions'.²¹ This was a total of \$11.5 million. The letter also requested that the remaining 5 per cent of television income be 'set aside for youth and junior Rugby players'. Moreover, it specified that none of the television income be devoted to paying coaches and other support staff.

While the Australian Unions may have signed a piece of paper agreeing to the players' association 'directing' the allocation of Murdoch's millions to ward off the World Rugby Corporation three weeks earlier, they balked at the idea of abiding by the requests contained in the letter of 8 September. A series of meetings occurred and letters were exchanged

over the next two months which focussed on five major issues.

First, there was the issue of the quantum of television income available for distribution in 1996. The players' association letter specifies, and implies, that it was able to direct the distribution of \$11.5 million. The actual sum the Australian Unions received for 1996 was \$10.36 million. Requests by the players' association to obtain a copy of the News Corporation contract were simply deflected by the refrain that its contents were confidential. Second, the players' association sought to restrict the number of players — squad or roster sizes — to those who could share such income. They originally wanted a squad size of 30 players per state, eventually agreeing to 35.²²

Third, the letter of 8 September had requested \$4.9 million be paid to the Wallabies. The Australian Rugby Union had 'budgeted' to pay the Wallabies \$5.4 million. It was unclear how this difference would be resolved. The players' association was concerned that increasing payments to the Wallabies would necessarily translate into reductions in payments for other players. Fourth, there was the question of whether payments to players should be determined according to a formula or classification system. In a letter to Ian Ferrier on 15 September 1995 Tony Dempsey said 'it was unlikely that the Players' [Association] would direct the ARFU as to what amounts individuals ought be remunerated ... rather [it] would consider developing a formula/method for the distribution ... to the players based upon certain categories/classes'.²³ It subsequently abandoned this notion as a task too difficult to achieve.

Finally, the state Unions requested that the players' association direct \$300 000 to be paid to each of them to remunerate coaches and other support staff. They cried 'poor mouth', pointing to the additional costs and burdens brought on by professionalism and provided details of their financial affairs. They also asked the players' association to provide both New South Wales and Queensland with \$100 000 to establish youth scholarship programs — though it is unclear if this latter amount would be counted as part of the 95 per cent, or 5 per cent, of television revenue.²⁴

In response to these representations the players' association wrote to the three state Unions on 3 November 1995 revoking its earlier direction, and outlining a new direction for 1996. The new direction allocated \$200 000 to both New South Wales and Queensland, and \$250 000 to the Australian Capital Territory, for coaches and support staff. \$10 000 would also be allocated to each first division rugby club in the three states, as

well as to the country rugby unions of New South Wales and Queensland. The total income involved here (to support staff and clubs) was in the vicinity of \$990 000. Remaining monies available would be allocated 'entirely' to senior players in the three states 'in proportions negotiated between the contracted player' and their Union. These allocations were conditional on the respective Unions writing a letter to members supporting the appointment of two player directors to their executive/boards,²⁵ per the Ferrier agreement; agree to a maximum roster of 35 players; an independent auditor's certificate proving distribution of monies having been allocated per the players' association's direction; a cheque to the players' association 'within seven (7) days', to enable it to distribute the \$10 000 to each of the senior and country clubs; and for each of the state Unions to pay the Australian Rugby Union \$3333 'in repayment' of the players' association earlier loan (see above).²⁶

John O'Neill, who had been appointed the Australian Rugby Union's managing director and chief executive officer (having previously been the head of the State Bank of New South Wales) in October, responded on behalf of the Australian Unions on 7 November 1995. He simply said: 'At this stage we are not prepared to accept that the ... Players' Association ... is entitled to give a direction in terms set out in your fax'.²⁷ On the following day Dempsey wrote to O'Neill inquiring whether the Unions were not prepared to accept the direction because the formal elections for the recently formed players' association executive had not yet taken place. He also requested that the moneys (to be) allocated per the players' association direction of 3 November 'be held in trust' by the Australian Rugby Union, pending ratification of the direction by the soon to be elected executive.²⁸ O'Neill replied that the formal election of office bearers of the association 'is just one of numerous problems I have with the [association's] direction'. Nor could he 'see any reason whatsoever' to abide by the association's 'suggestion' that the Australian Rugby Union should hold funds in trust.²⁹

This exchange of letters between O'Neill and Dempsey represented the beginning of a breakdown, or rupturing, in the relationship between the Unions and players' association. It will be argued here that this constituted a tactical blunder by the Unions. Following representations from the Unions after its first direction of 8 September 1995, the players' association had agreed to defray the cost of coaches and support staff to the tune of \$650 000 — where the Unions had requested \$900 000. Such

payments had been explicitly excluded in the negotiations leading up to the signing of the Ferrier letter (see above). The more 'democratic' players' association had been prepared to allocate in excess of \$300 000 to state first division clubs and country rugby union. Such income — that is, for coaches/support staff and to club sides — represented approximately 10 per cent of the television income that the Ferrier letter 'enabled' the players' association to 'direct'.

The Ferrier agreement confined itself to the distribution of television income. It was silent on other sources of income³⁰ — such as attendance and sponsorships. No consideration seems to have been given to these other sources of income in the discussions which occurred concerning the players' association's direction for 1996. The Super 12 and Tri-Nation competitions were popular with spectators and sponsors.³¹ For 1996 Murdoch's television income constituted 28 per cent of Australian rugby's income.³² With the benefit of hindsight the Unions may have been better advised to go along with the association's direction of 3 November 1995 — especially that pertaining to the \$650 000 for coaching and other support staff. For the player's association this was a significant concession — a direction outside the 'terms' of the Ferrier agreement. It may have helped to establish a precedent in allocating proportions of future television revenue streams for purposes other than payments to players. The players' association had offered a concession and been rebuffed. This served to harden its determination to enforce the Ferrier agreement.

On 15 November 1995 a meeting was held between O'Neill and players' association representatives to clarify issues over the latter's direction of television revenue for 1996. The *Sydney Morning Herald* of that day contains a fairly lengthy article 'backgrounding' the forthcoming meeting. O'Neill is quoted as saying: 'I don't believe the interim committee of the Players' Association has much credibility, and I don't take them seriously'. He also said: 'In the end we've got to come to a harmonious relationship with the Players' Association, with us recognising that they represent all the interests of all the contracted players, and they in the end have to recognise that the ARFU's governing role in the game must be respected'. Queried on whether differences between the two sides over interpretations of the Ferrier agreement would end up in court he said 'No ... They don't want to shoot the goose that laid the golden egg'. Dempsey was not impressed with O'Neill's dismissive comments concerning the players' association. He foreshadowed that the association

might pursue legal action to enforce its rights under the Ferrier agreement. In response to O'Neill he said 'Who's the goose and who's got the egg ... If it wasn't for the players, then the Murdoch deal wouldn't have gone ahead.'³³

At the meeting a document was circulated which estimated the likely distribution of television revenues between the state Unions. It is reproduced here as Table I. In their scramble to 'woo' players back from the World Rugby Corporation the Australian Rugby Union was most anxious to secure the services of the Wallabies — the elite of Australian players. Their contracts were 'charged out' to their respective state Unions per the information contained in Table I. New South Wales and Queensland had eleven Wallabies each; the Australian Capital Territory only had two. As a result the Australian Capital Territory's payments to players were more than \$1 million less than those paid in the other two states. While the unevenness in the distribution of player payments in the three states was not raised at the meeting of 15 November, it subsequently proved to be a point of contention (see below).

Table I

November 1995 Estimate of Distribution of Australia's Share of News Corporation Revenue, of \$10.36 million for 1996 (\$ '000)

	ARU	NSWRU	QRU	ACTRU	Total
Players	1100	3351	3174	1761	9386
Referees	300				300
Team Management	300	300	370	300	1270
Total	1700	3651	3544	2061	10 956

Table II

January 1996 Estimate of Distribution of Australia's Share of News Corporation Revenue, of \$10.36 million for 1996 (\$ '000)

	ARU	NSWRU	QRU	ACTRU	Total
Players	1100	3086	3399	2047	9632
Team Management	300	325	228	216	1069
Match Officials	300				300
Payroll Tax		197	174	115	486
Total	1700	3608	3801	2378	11 487

The 15 November meeting calmed tensions between the two sides, with both O'Neill and Dempsey expressing satisfaction. Dempsey is reported as saying that: 'The rugby unions are steps closer to meeting their obligations ... O'Neill said the players will get the entire 95 per cent of the revenue. There are still a number of issues to be resolved, but we're confident that ... [they] can be resolved amicably.' O'Neill said 'I made a presentation [see Table I] ... which showed that on the basis of players currently contracted, the amount paid by the unions exceeds the 95 per cent of the Murdoch monies ... We've not only observed it, we've exceeded it.' The Australian Rugby Union would pay coaches and support staff from other revenue sources. The players' association changed its direction once again — all of the 95 per cent of the Murdoch money would be distributed to players!³⁴

In a subsequent letter to O'Neill on 24 November Dempsey outlined a number of issues he sought to resolve. He pointed out that the total payments to players only represented 90.5 per cent of the television revenue.³⁵ He also said that 'the breakdown of the figures is not detailed enough in terms of what amounts are guaranteed to players and what amounts represent contingency in the case of injury etc.'. In addition, Dempsey said payments to match officials are not to be charged to television revenue, and pointed out that none of the 5 per cent of television revenue available for youth development had been distributed.³⁶

Dempsey met with O'Neill and Matthew Carroll — at the time a rugby director of the New South Wales Rugby Union, and more recently general manager rugby of the Australian Rugby Union — on 28 November. In a follow-up letter on 1 December Dempsey asked O'Neill to provide more details concerning how the \$1.1 million estimate of payments to the Wallabies was arrived at, an auditor's certificate confirming the distribution of revenues at the end of 1996 (to be appointed by the association), and why 5 per cent of income had 'not been distributed to youth development but rather to referees and coaching staff'.³⁷

O'Neill took until 23 January 1996 to respond to Dempsey.³⁸ His response contained an updated breakdown of the allocation of television income, which is reproduced here as Table II (see above). O'Neill said that the \$1.1 million for the Wallabies was based on a calculation of payments required, a players' association audit of the Union's books was unnecessary as they 'must be audited by law and the player members of the Board will be required to approve the accounts', and 'the Union's

spend far more on development than what is 5 per cent of television rights'.³⁹

On 16 February Dempsey replied to O'Neill's 23 January letter. He observed that O'Neill's updated data (see Table II) revealed that the player's share of the television revenue was 92.97 per cent.⁴⁰ Dempsey said: 'I look forward to meeting with you in the future to discern how and to whom the Association will direct how the balance is to be distributed'. He informed O'Neill that 'the Association reserves the right to distribute the television right[s] revenue for the remaining years of the agreement, i.e. 9 years'.⁴¹

In the ensuing months the relationship between the Unions and the players' association became increasingly strained. Besides the continuing imbroglio over the direction of Murdoch's millions two other issues emerged to sour the relationship. On 1 April 1996 the Kerry Packer backed pay television operator Optus Vision initiated action, in the Supreme Court of New South Wales, challenging the validity of the News Corporation television deal. Optus maintained that the Australian Rugby Union had sold the rights to Channel Seven, who, in turn, had sold them to Optus. After the News Corporation deal games were shown on Foxtel.⁴²

The players' association was worried about the implications of Optus action, if successful, for the contracts of members. In May Dempsey rang O'Neill on several occasions concerning developments in the Optus' case. In a letter to O'Neill on 20 May he said: 'I refer to my repeated attempts to contact you by way of telephone and your failure to reply'.⁴³ In a letter on the following day to Dempsey, O'Neill said: 'There was really no need to send your letter _ its tone and content is disappointing'. He also said that he had been misinformed about the purposes of Dempsey's earlier calls.⁴⁴

On 22 and 23 April 1996 the Australian Rugby Union held a strategic planning conference where, amongst other things, it contemplated the development of a national (club based) competition. Part of the attraction of such a competition was its potential to obtain a larger slice of News Corporation's television income — similar competitions operate in New Zealand and South Africa. Dempsey and former Wallaby captain Phil Kearns were invited to attend the conference. Dempsey subsequently circulated an undated six-page document to members outlining the players' association's concerns/position on various issues associated with a national competition.⁴⁵ On 22 May 1996 a telephone conversation took place between Dempsey and O'Neill after their recent exchange of

letters concerning the Optus case. It appears that the two may not have spoken to each other in hushed tones.

On 28 May Dempsey wrote to O'Neill saying: 'I wish to formally notify you of my disappointment at the tone and content of the language used by you during the course of that conversation'. Focusing on the strategic planning conference, Dempsey rejected O'Neill's claim that he had breached a duty of confidentiality, by discussing issues raised at the conference with his members. He said:

I was invited to the ... Conference ... presumably as a representative of the players. It was never conveyed to me that the contents of the _ Conference were to be kept private and confidential. It is my duty as President of the Association to convey information to members about proposals, policies and decisions ... that may impact upon their interests and well-being. Much of the poor relations between officials and players in the past has been the result of the lack of consultation by the Rugby Bodies to the players about such issues. I would not have attended the ... Conference if it meant I was not able to pass on that information to the members for their benefit.⁴⁶

In a letter of 4 June O'Neill restated his claim that Dempsey had ignored a request to ensure that matters discussed at the conference were kept confidential. He maintained that Dempsey's premature disclosure of information had 'created an environment of rumour, gossip and innuendo which was very unhelpful to proper and informed decision making'.⁴⁷ In a letter on 17 June Dempsey again rejected O'Neill's claim that matters discussed at the conference should be kept confidential.⁴⁸

In their telephone conversation of 22 May 1996 O'Neill and Dempsey also crossed swords on the distribution of television income for 1997. In his letter of 28 May Dempsey reiterated his view that it was the responsibility of the players' association, not the Australian Rugby Union, to determine the disbursement of such income. In response, O'Neill in his letter of 4 June, said such a notion 'is completely and utterly rejected'. In a subsequent letter on 26 June O'Neill informed Dempsey that any attempt at direction by the players' association would be rejected as 'a misconception and misinterpretation of the August 1995 agreement'.⁴⁹

A meeting occurred between Dempsey, O'Neill and Matthew Carroll on either 24 or 25 June 1996. Exchanges between Dempsey and O'Neill may have become heated over the vexed issue of the 'direction' of television income. Dempsey wrote to O'Neill on 26 June 1996 and said 'I wish to

formally voice my concern and disappointment at your assertion during the course of the meeting that I “screwed” the ARFU and its member unions by negotiating the terms of the Ferrier Agreement on behalf of the players’.⁵⁰

O’Neill became more adamant in his rejection of the players’ association’s ‘direction’ in a letter he wrote to Dempsey on 15 July 1996. He said: ‘the ARU recognises the need and obligation for it to consult with your Association regarding the fundamental principle and structure of player payments’. He also said that ‘as far as the ARU is concerned’, the Ferrier letter ‘did not give the Players’ Association anything like the detailed monitoring role the Association kept trying to exercise’. He maintained that the association’s ‘alleged rights ... were exercised and exhausted once and for all by the direction or requirement that 95 per cent 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’. To make sure that there were no misunderstandings, and to emphasise the point, O’Neill said: ‘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 Agreement] have been complied with and are now exhausted’.⁵¹

The players’ association became increasingly alarmed about developments. In June 1996 it sought a legal opinion as to the enforceability of the Ferrier letter and ‘what if any remedies might be available to the Players and/or the Association to enforce a direction’. Legal counsel pointed out that ‘it is always apt to stress that there are no certainties in litigation’. The opinion concluded that, in all probability, the Ferrier letter and the associated power to direct were enforceable. Players’ association directions, however, would need to be made in ‘good faith’ and ‘for the benefit and interest of its members’. The association sought a supplementary opinion as to whether any increases in the revenues obtained from News Corporation could be directed per the Ferrier letter. Legal counsel said that it could.⁵²

Meetings were convened by the association with members to report on developments and garner support. On 5 July seventeen Wallabies signed a letter, addressed to John O’Neill, expressing support for the association’s stance on the direction issue. Though the letter was never sent, its existence was well known to the powers that be. O’Neill wrote to

Dempsey on 16 July expressing concern about the latter's meeting with the Wallabies. O'Neill told Dempsey he 'may have misrepresented [O'Neill's] position on certain matters', and that he should not 'have sought the Wallabies support in this way without necessarily having acted in an even-handed and fair fashion'.⁵³ Dempsey replied to O'Neill saying that he found his request that the association's executive should not meet with Wallabies, during training camps to discuss player association business, 'puzzling!'. Dempsey claimed that the meeting had occurred during free time, attendance was voluntary, and did not interfere with training and playing obligations. Moreover, he rejected O'Neill's imputation that he had made misleading statements concerning O'Neill's position or that he had 'acted in an underhanded and unfair fashion'.⁵⁴

On 17 July 1996 representatives of the Australian Rugby Union attended a meeting of the association's executive in an attempt to resolve their differences over the Ferrier letter. Australian Rugby Union president Phil Harry apparently said that the Union was prepared to enter into a 'revised' agreement as a substitute for the Ferrier letter. In a letter to O'Neill on 19 July Dempsey informed O'Neill that before the players' association would 'discuss ... or indeed entertain such a concept' it would require 'an outline of the essential terms and conditions' the Union had in mind, 'within seven days'.⁵⁵ Such an outline never arrived.

Two further issues emerged to complicate matters. The first involved incentive, or match, payments to New South Wales players. The players maintained that they had not received the match payments they had been promised when they signed contracts. It is alleged that officials of their Union admitted that they had spent \$300 000 of the News Corporation television income, which had been 'directed' to paying players, to remunerate coaches and support staff.⁵⁶ John Winstanley of the New South Wales Rugby Union rejected the claim that players' contracts had been breached.⁵⁷ Second, in September the states informed the association it would not allow an independent audit of their books to ascertain whether they had complied with the association's 1996 direction. Ashley Selwood of the Queensland Rugby Union informed Dempsey 'that upon discussion with the ARU it was confirmed that the audit at state level is not required'.⁵⁸

The players' association sent its 'direction' for the distribution of the News Corporation television revenue for 1997 to the Unions in September 1996. The three states were directed to pay no more than 35 contracted

players the same total amount as they had in 1996, subject to New South Wales and Queensland receiving 20.3 per cent each, and the Australian Capital Territory 40.6 per cent, of any increase in the television revenue from 1996 to 1997. At the time of the direction there was a dispute between the partners of the southern hemisphere consortium concerning shares. It was thought that Australia's increase would be in the vicinity of \$750 000.⁵⁹ \$1.1 million would be distributed to the Wallabies 'in such amounts as the ARU in its sole discretion determines'. The remaining 18.8 per cent of any increase in television revenue — \$141 000 — would be for the players' association.⁶⁰

The Unions were given fourteen days to adhere to the association's direction. In due course they informed the association that it already knew the views of the Unions on the direction issue.⁶¹ In an earlier letter to Dempsey on 26 June 1996 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 Law'.⁶² Given the problems it had experienced in enforcing its 1996 direction, and the Unions outright rejection of its direction for 1997 the Rugby Union Players' Association decided it had little choice but to call the Australian Rugby Union's bluff. On 7 November 1996 it announced it would seek to enforce the Ferrier letter in an action before the Supreme Court of New South Wales.

Legal Action and a Collective Bargaining Agreement

Following the decision to embark on legal action a meeting occurred between Matthew Carroll and Tony Dempsey. At the meeting Carroll floated the idea of negotiating a collective bargaining agreement to resolve the impasse between the Unions and players' association.⁶³ The Australian Rugby Union hoped this preparedness to enter into discussions would persuade the players' association to withdraw its legal proceedings. This was not something that the association was prepared to do. Dempsey informed John O'Neill that the association would only withdraw its action once a 'satisfactory' collective bargaining agreement had been negotiated.⁶⁴

In the ensuing months a series of legal manoeuvres punctuated negotiations over a collective bargaining agreement. The association sought to use the legal proceedings, and the threat or possibility of a

favourable decision, as a means to 'persuade' the Unions to enter into an agreement which was equal to, if not an improvement, on the Ferrier letter.

The Unions searched for a means to escape the foreshadowed legal action, hanging, as it were, like a sword of Damocles over their heads. In February they developed a two-part strategy. First, they requested the Court to order the players' association to provide security of costs — in the order of \$113 000 — in the eventuality that it was unsuccessful in its action. Second, in the association's action, Tim Kava, its treasurer and a non-playing member, had been listed as a representative of the World Rugby Corporation players who had waived their contractual rights in agreeing to the Ferrier letter. The Unions requested Kava's representative status expunged or modified to only include those players who agreed to him representing them.⁶⁵

The hearing of these interim matters was deferred at the request of the parties, pending negotiation of a settlement/collective bargaining agreement. The Unions application was subsequently heard on 23 May 1997. This change of heart appears to have resulted from pressure by the states who had been made aware, and expressed disquiet about collective bargaining developments; particularly the role, or power, afforded to the players' association.⁶⁶ The Court's decision was again delayed at the request of the parties. On 30 July 1997 Mr Justice Giles handed down his decision on these interim matters, noting that 'at least for the present, the negotiations have come to an end'.⁶⁷

The Unions, it should be remembered, had refused to accede to the association's direction for 1997. Of particular relevance here is the \$141 000 the association had directed to itself for its administrative needs. As a result the players' association was impecunious. Its other source of funds was membership fees — set at \$15 a member; and it had approximately 100 members producing total membership income in the order of \$1500. At the end of the 1995/6 financial year the players' association had an accumulated deficit of slightly less than \$14 000.⁶⁸ In April 1997 the Australian Rugby Union had loaned the association \$50 000. This was an advance on monies the association would receive per the pending collective bargaining agreement (see below). O'Neill in a letter to Dempsey on 17 April said: 'It is understood that in the event that agreement and subsequent execution of the Collective Bargaining Agreement is not reached then the Players' Association will repay the

\$50 000 advance within 21 days of negotiations having irrevocably broken down'.⁶⁹

Mr Justice Giles found against the Unions on security of costs. In doing so he linked the impecuniosity of the players' association to the non-preparedness of the Unions to abide by the association's direction — the substantive matter yet to be determined by the Court. 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'. On the representation issue he found for the Unions. He concurred with their submission that the various players who had signed with the World Rugby Corporation 'may well have different positions in the[se] proceedings' to those of Tim Kava.⁷⁰

The legality, or enforceability, of the Ferrier letter was never determined by the Chief Judge. Following his decision, particularly that concerning security of costs, the Unions decided to conclude negotiations on a collective bargaining agreement. Maybe they, like the players' association, had received advice that the Ferrier letter was a legally binding document.

The parties based their discussions, or used as models, the National Football League Collective Bargaining Agreement 1993-2000 (American Football), Australian Football League Collective Bargaining Agreement 1995-8, and Ericsson Cup Collective Agreement 1996-9 (Australian Soccer).⁷¹ The first agreement was of particular interest.⁷² It contained a lengthy section entitled 'Guaranteed League Wide Salary, Salary Cap and Minimum Team Salary'. Amongst other things, this section linked players' income to revenues received by teams and leagues, and provided definitions of what revenue streams should be included, or excluded, for such calculations.⁷³

The parties appear to have drafted thirteen versions of the collective bargaining agreement. The final — or lucky thirteenth! — draft was agreed to at a signing at noon on Wednesday 8 October 1997, at Rugby House, North Sydney. The agreement contains 25 clauses and four schedules. The latter concern terms and conditions of employment, a grievance procedure and standard player contracts for full-time professional and casual players respectively. The term of the agreement is from 8 October 1997 to 30 October 2000. Clause 23 includes a provision, if the parties are unable to negotiate a new agreement, for the 'current'

agreement to operate until 30 October 2006. If this should occur most of the income entitlements contained in the 'current' agreement for the year 2000 would be increased by 5 per cent in the first year, and by the consumer price index thereafter. Clause 25 states that the 'current' agreement is subject 'to there being no Material Adverse change to the ARU's financial arrangements'. Such a change is defined as being a 25 per cent or more decline in 'Player Generated Revenue', compared with the previous twelve months.

Clause eight of the agreement specifies that 111 players contracted to the three states (a player roster of 37) should, at a minimum receive \$11.5 million in 1997, \$12.075 million in 1998, \$12.678 million in 1999 and \$13.311 million in 2000, or 25 per cent of Player Generated Revenue — whichever is the greater. On or before 14 January of each year of the agreement the Unions are obliged to provide to the players' association evidence concerning payments to players. In the event that total contractual payments to players are less than the minimum amounts specified for each year, the balance will be paid early in the next year to players on a pro rata basis. Player Generated Revenue is broadly defined to include income obtained from broadcasting rights, match fees, gate takings, sponsorships and licensing/merchandising fees net of commissions and other agreed deductibles. Funds earmarked for players will not include payments for coaches/team management, payroll tax, group insurance and workers' compensation premiums, and other team management costs.

The agreement also specifies that the Unions will pay the players' association \$200 000 in 1997, \$225 000 in 1998, \$250 000 in 1999 and \$275 000 in 2000 to aid it in 'the furtherance of ... [its] objects'. The players' association, in turn, agrees to provide the Unions with an auditor's report to demonstrate that such monies have been expended in accordance with 'legitimate' (my term) objects of the association. Similar monies are paid under respective collective agreements in Australian football, soccer and basketball.⁷⁴

No fewer than 21 of the 37 contracted players of each state shall receive minimum salaries of \$50 000 for 1997, increasing to \$67 000 in 2000. The remaining sixteen players are to receive minima of \$25 000 for 1997, increasing to slightly less than \$29 000 in 2000. These minima constitute the highest amounts paid to the players of Australian professional team sports.

Players are required to take out their own medical insurance, with the respective Unions meeting medical and related expenses not covered by such insurance. While the agreement and related schedules do not specifically say this, it appears that players unable to play because of injury will receive their full contractual entitlements. The agreement also contains a group insurance scheme providing payment up to \$500 000 for players who die, or are totally or permanently disabled, resulting from an injury incurred during a game, or due to their employment as a rugby player. Other than for matches played as part of a tour, players are entitled to an eight-week break in any given twelve-month period.

The agreement also contains clauses concerning player directors on various Union boards,⁷⁵ a joint committee on player safety and welfare, a career training scheme to help players with alternative employment who retire from playing rugby (with maximum total payments to players ranging from \$100 000 in 1997, to slightly less than \$116 000 in 2000), and a consultative procedure for introduction of 'major changes' by the various Unions. The agreement also specifies that there should be regular meetings between the players' association and the respective Unions. In addition, the Unions undertake not to enter into collusive arrangements in negotiating with players, and not to introduce transfer, drafting or assignment rules, during the life of the agreement, without the written permission of the Rugby Union Players' Association. This latter provision can be contrasted with the collective bargaining agreements in Australian football and basketball, which acknowledge, or recognise, that the different labour market rules, which govern the respective sports, are necessary for their effective operation.⁷⁶

Disputes concerning the interpretation of the agreement, which cannot be resolved by negotiations, are to be processed either by mediation per the Australian Commercial Disputes Centre, arbitration per the Commercial Arbitration Act 1984 (New South Wales) or in proceedings before an appropriate court. Disputes between Unions and players concerning their employment relationships will be processed by mediators registered with the National Sports Dispute Centre.⁷⁷

Conclusions

In 1995 the Australian and state Rugby Unions found themselves confronting a major crisis. They were part of a consortium which had negotiated a lucrative television contract with Rupert Murdoch's News Corporation. They faced the prospect, however, of losing virtually all of

their best players to the World Rugby Corporation. The Ferrier letter solved this problem — it brought players back to the fold. The spokespersons who negotiated on behalf of players took advantage of the Unions' strategic vulnerability. The Ferrier letter included a clause which guaranteed that players would receive 95 per cent of Murdoch's television income, to be distributed according to 'the direction' of a yet to be formed players' association.

The Ferrier letter ensured the demise of the World Rugby Corporation. The crisis past, the Unions balked at having Murdoch's millions directed by the subsequently formed Rugby Union Players' Association. In September 1996 the Unions informed the association that the terms of the Ferrier letter had been 'exhausted'. The players' association adopted the stance that a contract is a contract, or a power of direction is a power of direction. It maintained and defended its right to determine the distribution of 95 per cent of Murdoch's television income.

The players' association initiated legal action to enforce its rights and those of its members. The threat that the Supreme Court of New South Wales would declare the Ferrier letter enforceable, especially after an interim ruling on security of costs—which went in favour of the players' association — induced the Unions to negotiate a collective bargaining agreement. The power, or strategic advantage, that the players' association brought to these negotiations was the threat that the Ferrier letter was a legally binding and enforceable contract.

After October 2000 the parties may negotiate a new collective bargaining agreement, or simply (?) roll-over the 'current' agreement to 2006. The Australian game may prosper and the Unions and players' association may develop a 'high trust' relationship in negotiating new collective bargaining agreements. After 2006 the Rugby Union Players' Association will not have the existence of the 'current' agreement, which in turn built on the foundations of the Ferrier letter, to buttress its position in collective bargaining. It used legal means to secure concessions for members, and entrench its organisational base as a negotiating agent, in securing the 'current' collective bargaining agreement. In the future it may well find that it will need to utilise industrial means to secure future successes. The cohesiveness or strength of the relationship between the leadership and membership of the Rugby Union Players' Association may be the key factor which will determine the future contours of collective bargaining in Australian Rugby Union.

Notes:

- 1 Sidney and Beatrice Webb, *Industrial Democracy*, Longmans, Green and Co., London, 1911 (originally published 1897), p. 572.
- 2 Professional team sports have also instituted rules to stop clubs from competing for players within a league. For details of such rules employed in Australian sport see Braham Dabscheck, 'Playing the Team Game: Unions in Australian Professional Team Sports', *Journal of Industrial Relations*, Dec. 1996, pp. 602-08.
- 3 It is realised that the Australian Capital Territory is a territory and not a state. For ease of exposition, however, it will be referred to as a 'state'.
- 4 Interview Matthew Carroll, general manager rugby, Australian Rugby Union, 24 Mar. 1998.
- 5 Peter Fitzsimons, *The Rugby War*, Harper Collins, Sydney, p. 200.
- 6 Rugby League developed as a separate sport as a result of player discontent over not receiving income for lost time in their secular employment following injuries, and not having to pay their own medical expenses. See Chris Cunneen, 'The Rugby War: The Early History of Rugby League in New South Wales. 1907-15', in Richard Cashman and Michael McKernan, eds, *Sport in History The Making of Modern Sporting History*, UQP, Brisbane, 1979.
- 7 See Jarrod McCracken (with Daniel Lane), *A Family Betrayal: One Man's Super League War*, Ironbark, Sydney, 1996; Mike Colman, *Super League: The Inside Story*, Ironbark, Sydney, 1996; Roy Masters, *Insideout: Rugby League Under Scrutiny*, Ironbark, Sydney, 1997; and Ken Arthurson (with Ian Heads), *Arko: My Game*, Ironbark, Sydney, 1997.
- 8 Letter Michael Hill (Turnbull Hill Partners) to Tony Dempsey (Player spokesperson) 14 Aug. 1995. The term 'letter' is used here generically to include facsimiles.
- 9 World Rugby Corporation Contract.
- 10 Quoted in Fitzsimons, *The Rugby War*, p. 300.
- 11 Press Statement, Mark Harthill, Chairman of Players' Committee, 11 Aug. 1995.
- 12 See Fitzsimons, *The Rugby War*, pp. 302-03; and Mark Snyders 'Endgame: How the Rugby Union War Was Won', *Inside Sport*, Mar. 1996, p. 36.
- 13 Matthew Carroll, in an interview on 24 Mar. 1998, said that the Australian Unions wanted to avoid 'Super League' type disputes over players' contracts.
- 14 [First Draft Agreement on] Australian Rugby Football Union letterhead, 11 Aug. 1995.
- 15 [Second Draft Agreement on] Australian Rugby Football Union letterhead, 11 Aug. 1995.
- 16 Letter P L Harry and I D Ferrier, 12 Aug. 1995.
- 17 Letter Phil Harry, 16 Aug. 1995.
- 18 Letter Ian Ferrier, 16 Aug. 1995.
- 19 Letter Ian Ferrier to Tony Dempsey, 16 Aug. 1995.
- 20 The Rugby Union Players' Association was incorporated in Oct. 1995 under the *Association Incorporation Act 1984* (New South Wales). Elections for office bearers were held on 22 Dec. 1995. Those elected were Tony Dempsey president, Dan Crowley vice-president, Rod Kafer secretary, Tim Kava treasurer, and Andrew Blades, Mark Connors and Troy Crocker as state representatives.
- 21 Letter Players' Association to Ian Ferrier, 8 Sept. 1995.
- 22 Since its formation the Rugby Union Players' Association has had a membership of 80 to 100 plus — a membership rate of approximately 80 per cent.
- 23 Letter Tony Dempsey to Ian Ferrier, 15 Sept. 1995.
- 24 Letter Tony Dempsey to Ian Ferrier, 14 Sept. 1995; Letter Ian Ferrier to Tony Dempsey, 15 Sept. 1995; Letter Tony Dempsey to Ian Ferrier, 15 Sept. 1995; Letter Ian Ferrier to Tony Dempsey, 18 Sept. 1995; Letter Tony Dempsey to Ian Ferrier,

- 19 Sept. 1995; Letter Ian Ferrier to Tony Dempsey, 20 Sept. 1995; Letter Tony Dempsey to Matthew Carroll, 26 Sept. 1995; Letter Graham Fredericks (Australian Capital Territory Rugby Union) to Tony Dempsey, 28 Sept. 1995; Letter Matthew Carroll to Tony Dempsey, 3 Oct. 1995; and Letter Tony Dempsey to Matthew Carroll, 6 Oct. 1995.
- 25 The Australian and Queensland Rugby Unions agreed to the appointment of two player directors, only allowing one player to have voting rights. The New South Wales and Australian Capital Territory Unions appointed two player directors, with full voting rights, to their respective boards. With both these latter Unions one of the player directors was a contracted 'Super 12' player, the other a club player from their first division.
- 26 Letter Tony Dempsey to Mark Sindaberry (Australian Capital Territory Rugby Union), 3 Nov. 1995; Letter Tony Dempsey to John Winstanley (New South Wales Rugby Union), 3 Nov. 1995; and Letter Tony Dempsey to Terry Doyle (Queensland Rugby Union), 3 Nov. 1995.
- 27 Letter John O'Neill to Tony Dempsey, 7 Nov. 1995.
- 28 Letter Tony Dempsey to John O'Neill, 8 Nov. 1995. See footnote 20.
- 29 Letter John O'Neill to Tony Dempsey, 9 Nov. 1995.
- 30 Though see the [Second Draft Agreement] of 11 Aug. 1995 above — footnote 15.
- 31 For the twelve months ending 31 Oct. 1995 the Australian Rugby Union lost over \$800 000. In 1996 it lost \$3 million. In 1997 it announced a \$1 million profit. See *Sydney Morning Herald*, 3 Apr. 1996 and *Australian*, 3 Mar. 1998.
- 32 This information was provided at a Strategic Planning Conference held by the Australian Rugby Union in Apr. 1996. See Affidavit, Anthony Francis Dempsey, Rugby Union Players' Association vs Australian Rugby Union and anors, Supreme Court of New South Wales, Commercial Division, No. 50225 of 1996, 16 May 1997, p. 4.
- 33 *Sydney Morning Herald*, 15 Nov. 1995.
- 34 *Sydney Morning Herald*, 17 Nov. 1995. Also see *Australian* 16 and 17 Nov. 1995; and Letter Tony Dempsey to John O'Neill, 16 Feb. 1996.
- 35 If the \$57 000 payment to the players' association is included, which they received in Oct. 1995, this figure increases to 91.1 per cent.
- 36 Letter Tony Dempsey to John O'Neill, 24 Nov. 1995.
- 37 Letter Tony Dempsey to John O'Neill, 1 Dec. 1995.
- 38 Dempsey sent him two reminder notes on 19 Dec. 1995 and 16 Jan. 1996.
- 39 Letter John O'Neill to Tony Dempsey, 23 Jan. 1996.
- 40 If the \$57 000 received by the players' association was factored in, it would have constituted 93.52 per cent.
- 41 Letter Tony Dempsey to John O'Neill, 16 Feb. 1996. There was another round of letters between the two in Mar. 1996, where positions were restated. Letter John O'Neill to Tony Dempsey, 5 Mar. 1996; and Letter Tony Dempsey to John O'Neill, 11 Mar. 1996.
- 42 See *Sydney Morning Herald*, 2 Apr. 1996; *Australian*, 2 and 3 Apr. 1996; and *Australian Financial Review*, 2 and 3 Apr. 1996. In Dec. 1996 the matter was resolved in an out of court settlement, reportedly of \$900 000. For details concerning the evolution of this 'case' see *Australian*, 7 Sept. and 19 Nov. 1996; *Sydney Morning Herald*, 11 and 19 Nov. 1996; and *Australian Financial Review*, 15 and 19 Nov., 5 and 11 Dec. 1996.
- 43 Letter Tony Dempsey to John O'Neill, 20 May 1996.
- 44 Letter John O'Neill to Tony Dempsey, 21 May 1996.
- 45 'The ARFU National Rugby Competition', The Rugby Union Players Assoc. [Undated, probably May 1996].
- 46 Letter Tony Dempsey to John O'Neill, 28 May 1996.

- 47 Letter John O'Neill to Tony Dempsey, 4 June 1996.
- 48 Letter Tony Dempsey to John O'Neill, 17 June 1996.
- 49 Letter John O'Neill to Tony Dempsey, 26 June 1996. Elsewhere the letter (contradictorily?) said 'You know that the ARU and its member unions intend to comply with the 95% arrangement'.
- 50 Letter Tony Dempsey to John O'Neill, 26 June 1996.
- 51 Letter John O'Neill to Tony Dempsey, 15 July 1996. On 9 July a meeting took place between players' association representatives and Ian Ferrier. Ferrier apparently said the players' association 'did not have the right to direct how [television] money was distributed between the three states but could direct how it was distributed to players from a state once the state had received it'. Tony Dempsey File, 12 July 1996.
- 52 Opinion, Rugby Union Players' Association versus Various Australian Unions, 8 July 1996, pp. 6, 17 and 16; and Supplementary Opinion, Rugby Union Players Association vs Various Australian Unions, 15 July 1996.
- 53 Letter John O'Neill to Tony Dempsey, 16 July 1996. On 29 May 1996 John Winstanley wrote to Dempsey complaining about him meeting with New South Wales players at training.
- 54 Letter Tony Dempsey to John O'Neill, 19 July 1996.
- 55 [Second] Letter Tony Dempsey to John O'Neill, 19 July 1996. This was a separate letter to that contained in the above footnote.
- 56 Letter Tony Dempsey to John Winstanley, 29 Aug. 1996.
- 57 Letter John Winstanley to Tony Dempsey, 12 Sept. 1996.
- 58 Letter Ashley Selwood to Tony Dempsey, 13 Sept. 1996.
- 59 Australia received a larger increase. See *Sydney Morning Herald*, 8 Mar. 1997.
- 60 Letter Tony Dempsey to Mark Sindeberry, 16 Sept. 1996; Letter Tony Dempsey to John Winstanley, 16 Sept. 1996; Letter Tony Dempsey to Ashley Selwood, 16 Sept. 1996 and Letter Tony Dempsey to John O'Neill, 16 Sept. 1996. The actual Direction is dated 17 Sept. 1996.
- 61 Letter John O'Neill to Tony Dempsey, 30 Sept. 1996; Letter John Winstanley to Tony Dempsey, 30 Sept. 1996; Letter Stephen Thornton (Queensland Rugby Union), 4 Oct. 1996. There does not appear to have been a response from the Australian Capital Territory Rugby Union.
- 62 Letter John O'Neill to Tony Dempsey, 26 June 1996.
- 63 Interview Matthew Carroll, 24 Mar. 1998.
- 64 Letter Tony Dempsey to John O'Neill, 15 Jan. 1997.
- 65 It might be interesting to contrast this with the Australian Rugby Union's stance in the Optus litigation (see above). Rather than have several (numerous?) players testify that if it hadn't been for the News Corporation deal (and the Ferrier letter!) players would've deserted to the World Rugby Corporation, O'Neill wrote to Dempsey saying 'it may be better for you to make a statement on behalf of the Players' Association rather than individual players'. Letter John O'Neill to Tony Dempsey, 22 Oct. 1996.
- 66 Letter John Winstanley to John O'Neill, 10 Apr. 1997; Letter Stephen Thornton to John O'Neill, 10 Apr. 1997 and Letter Mark Sindaberry to Matt Carroll, 10 Apr. 1997.
- 67 The Rugby Union Players Association versus Australian Rugby Union and others. The Supreme Court of New South Wales, Commercial Division, Chief Judge Giles, 50225 of 1996, 30 July 1997, p. 2.
- 68 Travis and Travis Chartered Accountants, The Rugby Union Players Association Incorporated Financial Statements and Reports For The Period 1 Sept. 1995 to 30 June 1996.
- 69 Letter John O'Neill to Tony Dempsey, 17 Apr. 1997.
- 70 The Rugby Union Players Association vs Australian Rugby Union, pp. 17 and 34.

- 71 For details concerning the three respective agreements see Paul D Staudohar, *Playing For Dollars: Labor Relations and the Sports Business*, ILR Press, Ithaca, 1996, pp. 73-89; Dabscheck, 'Playing the Team Game', pp. 618-21; and Braham Dabscheck, 'Australian Soccer's First Collective Bargaining Agreement', *Australian and New Zealand Sports Law Association Newsletter*, vol. 6, no. 3, 1996, pp. 9-10.
- 72 It appears to have been brought to the attention by a wide-ranging consultant's report prepared for the Australian Rugby Union by Michael Crawford in 1996. The contents of the report are confidential.
- 73 NFL Collective Bargaining Agreement 1993-2000, pp. 74-89. For details concerning the use of salary caps in Australian sport see Dabscheck, 'Playing the Team Game', pp. 606-08.
- 74 Australian Football League Collective Bargaining Agreement 1995-8, Clauses 7-10; Ericsson Cup Collective Agreement 1996-9, Clause 12, Schedule B — Clause 4, and Schedule G — Clause 5; and National Basketball League Collective Bargaining Agreement 1996-8, Clause 13.
- 75 See footnote 25 above.
- 76 Australian Football League Collective Bargaining Agreement 1995-8, Schedule A — Clause 21; National Basketball League Collective Bargaining Agreement 1996-8, Clause 11.
- 77 Australian Rugby Collective Bargaining Agreement [1996-2000].