

The Combination of a Transfer System with a Salary Cap in Australian Football: A Critique

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*The notion of labour – in this case, players – as being a commodity to be bought and sold or to be hindered from concluding new contracts with new employers, is...contrary to fundamental tenets of the Universal Declaration of Human Rights and the International Labour Organisation charter, both of which are subscribed to by Australia. **The Stewart Report** (p.26).¹*

*...the [transfer] rules currently in force probably very often force the smaller clubs to sell players in order to ensure their survival by means of the transfer income thereby obtained. Since the players transferred to the bigger clubs are as a rule the best players of the smaller professional clubs, those clubs are weakened from a sporting point of view...Since the bigger clubs usually pay higher wages, the smaller clubs will probably hardly ever be in a position themselves to acquire good players from those clubs. In that respect the rules on transfers thus strengthen even further the imbalance which exists in any case between wealthy and less wealthy clubs. **Advocate General Lenz, The Bosman Case**, paragraph 224.²*

¹ Report by the Hon. D.G. Stewart, Senate Environment, Recreation, Communications and the Arts Reference Committee, Commonwealth of Australia, Canberra, 10 January 1995.

² Case C-415/93 *Union Royale Belge des Societies de Football Association ASLB v Jean-Marc Bosman* [1995] ECR I-4921.

Football Federation Australia (FFA) is apparently contemplating the introduction of a domestic transfer system to work in tandem with the salary cap which currently operates in Australian football. This note will provide a critique of such a proposal. It is organised into five sections. It begins with a brief discussion of the economics of professional team sports and an examination of various rules which have developed concerning the operation of the labour market. This is followed by a conceptual discussion concerning the inappropriateness of this proposal, especially how the introduction of transfer fees contradicts the stated purpose of a salary cap in seeking to enhance sporting equality, a key and legitimate object of a sporting league. The next section briefly canvasses how the courts have rejected the transfer system as being inconsistent with competitive norms and as an unreasonable restraint of trade under the common law. The imposition of such a scheme would expose FFA to action and defeat in the courts. This is followed by the presentation of empirical evidence that employment rules based on a transfer system have not achieved or enhanced competitive balance, while those based on a salary cap have. A summary and conclusion is presented in the final section.

I. The Economics of Professional Team Sports: The Quest for Competitive Balance

Professional team sports necessitate the co-operation of rival clubs to provide a contest, or a series of contests, known as a championship season. The best way to generate interest in the competition, or league, is to stage contests between teams where there is a high degree of uncertainty concerning the results of games. The more uncertainty there is, or what economists call competitive balance, the more interest there will be in the games staged by the league. Uncertainty stimulates supporters,

sponsors, broadcasters and the media which, in turn, enhances the ability of the league to maximise revenue.

A problem which has bedevilled virtually all leagues has been differences in the financial strength of clubs. It has been feared that the richest clubs will dominate the competition at the expense of the poor clubs. The rich clubs will have the ability to employ the best players and continue their dominance of the competition. The best way to overcome this problem would be at its source; that is, to redistribute income from rich to poor clubs, or provide poor clubs with extra revenue from income centrally derived by the league, to enable the poorer clubs to compete on an equal footing with richer clubs. At the risk of jumping ahead, this is a major attraction of salary caps, where clubs have an essentially equivalent wages fund to enter into the labour market and bid for players.

Football, as the game first developed in England and then spread across the globe, under rules developed by the Federation Internationale de Football Associations (FIFA) utilised a transfer system³ to govern the employment of players. Under the transfer system a player can move to another club during the life of his contract; and a player out of contract is precluded from moving to another club unless his/her former club agrees to such a release. In both cases, the movement of players with any skill and/or not near the end of their time on the pitch necessitates the payment of a high fee. As a general rule, higher fees are paid for more highly skilled players.

³ Over the years it has different names. As used here the transfer system is a generic name for such rules.

Putting to one side, how such a system denies players their basic human and employment rights, as indicated by the extract from Mr Stewart above, a major impact of such fees is to increase the costs of all clubs. To obtain a desired player clubs have to pay a transfer fee to the club that has hold of such players. The above extract from Advocate General Lenz, in the 1995 *Bosman* case, indicates that the rich clubs are in a better position to obtain the best players. It should be emphasised that he pointed out that because of their economic plight, poorer clubs will be forced to sell their best players. In other words, a transfer system has little or no impact on the attainment of sporting equality.

Transfer systems have other negative consequences. They have been associated with malfeasance and corruption. The Stewart Report of 1995 makes for a damning indictment of the operation of transfer fees in Australia in the 1980s and 1990s.⁴ This is not a phenomenon confined to Australia. Transfer fees have been associated with what is known as a ‘bung culture’, which pervades the operation of football in Europe and Latin America.⁵ If for no other reason than opening up Australian football to the re-emergence of problems identified in the Stewart Report, FFA would be well advised to discontinue any idea of adopting a transfer system.

Salary caps were introduced into American sport in the early 1980s. They then spread to Australia in the mid 1980s, when adopted by the then Victorian Football League (VFL). They and/or revenue sharing are a mainstay of the operation of Australian

⁴ The Stewart Report.

⁵ Richard Giulianotti & Roland Robertson, *Globalization & Football*, Sage, London, 2009, p. 125.

team sports. As flagged above, the essential idea of salary caps is that teams in a league have an equal financial base with which to attract players. It constitutes one way of seeking to overcome the problem of rich clubs and poor clubs. To repeat, all clubs have an essentially similar wages fund from which they are able to bid for players. Those clubs with the best managerial talent and/or an eye for evaluating player talent will achieve the best results. The salary cap, assuming that they have been developed in arms length ‘good faith’ bargaining between the league/clubs and players’ association/players also avoids the problem of economic rents associated with a transfer system. Under the current Collective Bargaining Agreement which operates in Australian football, the minimum and maximum salary cap of clubs ranges from approximately \$1.98 to \$2.35 million, with extra payments for two marquee players, three youth players and additional payments such as Additional Service Agreements.⁶ This agreement also has another important feature in that clubs have a ‘common’ roster of 20 to 23 players.

In summary, salary caps are a means to help the attainment of competitive balance; transfer systems are not and have the added disadvantage of being associated with malfeasance and corruption.

II. The Problem of Combining a Transfer System with a Salary Cap

In the discussion which follows it will be assumed that we are only discussing the introduction of a transfer system to the internal operation of the A-League. This will be referred to as a closed system. Movements of players between the A-League and other international leagues are governed by FIFA’s Regulations for the Status and

⁶ A-League Collective Bargaining Agreement 2008/09 - 2012/13.

Transfer of Players.⁷ It will also be assumed that transfer fees are envisaged here for payments for players who have played out their contract or who wish to transfer during their contractual term.

A possible advantage of such payments would be that they will provide clubs with an extra source of income. The problem with this is that in a closed system what is income for one club is cost to another club. The club that receives such income will be richer, while the club that purchases such a player will experience an increase in its costs. These are costs that will be on top of its obligations to players, per salary cap arrangements operating in the A-league.

One club will have extra income and an inferior playing squad and another club will have extra expenses and a superior playing squad. We are forced to make such an assumption concerning the 'quality' of squads, otherwise why would the buying club purchase the player? Could its management be less astute than the selling club? But why would the selling club sell a quality player? It could be conceivable that it has a surplus of skilled players in a particular position that the buying club does not have. The small size of squads in the A-League, however, may reduce the veracity of this supposition. The major reason why the club would be induced to sell a quality player would be for reasons enumerated by Advocate General Lenz above; the club is poor and needs to sell one of its stars to balance the books. The loss of such a star player will have the effect of undermining competitive balance.

⁷ FIFA's Regulations for the Status and Transfer of Players. Various incantations and revisions to these rules can be obtained from the FIFA website; <http://www.fifa.com/>.

What will be the impact of this exchange for the respective salary caps of the two clubs? The purchasing club will have spent extra income to obtain a player. Should such income be counted as constituting part of its salary cap? If it is, it in effect means that it will be forced to pay players in its roster, including the player it has paid a transfer fee to acquire, less than the salary cap it is entitled to, reduced by the amount of the fee. This will serve to reduce the 'competitive balance attraction' of the salary cap as the club will have less revenue to pay players. It will act as a deterrent on players to seek employment with the club.

Let us assume that payments for acquiring players from other clubs are excluded from salary cap considerations. This would mean that rich clubs would be at an advantage over poorer clubs in participating in the transfer market. They will purchase the best players from other clubs. This brings us back to the negative effects of transfer systems on competitive balance as noted in the extract above from Advocate General Lenz. Such a practice would subvert the competitive balance benefits that are provided by salary caps.

Let us now consider the situation for the selling club. There are two advantages here for the selling club. They are the savings they experience in no longer having to pay the wages of the departing player. This creates natural space in its salary cap. The second is the fee they receive from selling the player; what will be called the extra space in the salary cap. The natural space will conceivably be devoted to paying for the wage costs of obtaining a similar quality player. The transfer fee it received may have to be spent to pay the cost of obtaining such a player from another club. In other

words, the recycling of income between clubs will continue with no net increase in income for all clubs.⁸

We will now focus on the extra space in the salary cap. Three scenarios will be envisaged. They are there will be no change to the cap (it cannot be spent on players) and such income will be directed elsewhere; the fee can be added to the salary cap and spent on existing players; or be used for the payment of transfer fees in acquiring a new player. Scenario one will have no impact on the overall income that clubs can pay to its players. The problem here is where this extra income will be directed? It is well to remember the problems associated with transfer fees that Mr. Stewart highlighted in his 1995 Report. Scenario two will involve either extra payment, on average, to a squad one player less than at other clubs. However this 'income' advantage would diminish once an additional player is acquired; especially with scenario three where the fee is used to acquire an additional quality player.

In summary, the major problem with combining a transfer system with a salary cap is that it does not create more income for clubs; it involves a recycling of revenue between clubs. If transfer fees are not incorporated with the common salary caps of clubs, the payment of transfer fees would enable the rich clubs to purchase the best players at the expense of competitive balance. The two systems are incompatible. Alternatively, the combination of the two together cannot overcome the anti-competitive effects of transfer systems enumerated above.

⁸ There may also be administrative, time and other opportunity costs, with managing such a system.

III. The Law and Transfer Systems

The courts, in various jurisdictions, have ruled against the transfer system; that is the necessity of a club having to obtain permission and pay a fee to secure the services of a player who is out of contract from his former club. In 1963 Mr Justice Wilberforce in *Eastham* found English football's transfer system to be an unreasonable restraint of trade. He drew particular attention to how the operation of the system 'substantially interfere[s] with... [the] right [of players] to seek other employment – and I emphasise this – does so at a time when they are not in the employment of the retaining club'.⁹

The leading Australian case is *Tutty v Buckley*, which was determined by the High Court of Australia in 1971. The case involved a challenge by a rugby league player to the transfer system operated by the New South Wales Rugby League (NSWRL). The system was virtually the same as that which operated in football. The High Court ruled that the rules were an unreasonable restraint of trade. It said

The rules...prevent professional players from making the most of the fact that there are several clubs prepared to bid for their services. If valid the rules prevent a professional player who is a member of one club, even if he is not contractually bound to play for it, from becoming employed as a professional footballer by another club, except with the concurrence of the former club or the Qualification and Permit Committee. This is plainly a fetter on the right of a player to seek and engage in employment... The law treats unreasonable restraints as unenforceable because it is contrary to public policy that a man should unreasonably be prevented from earning his living in whatever lawful

⁹ *Eastham v Newcastle United Football Club* [1964] 1 Ch. 413, at 430-431.

way he chooses and that the public should unreasonably be deprived of the services of a man prepared to engage in employment.¹⁰

There have been numerous other cases where Australian courts and tribunals have struck down rules which stop out of contract players from taking up employment with other clubs prepared to employ them.¹¹ The most famous ‘global’ football case, of

¹⁰ *Buckley v Tutty* [1971] 125 CLR 353, at 373 and 380.

¹¹ *Hall v Victorian Football League* [1982] VR 64; *Nobes v Australian Cricket Board*, Supreme Court of Victoria, no. 13613 of 1991 (unreported); *Avellino v All Australia Netball Association* [2004] SASC 56 (zoning and residential qualifications); *Foschini v Victorian Football League*, Supreme Court of Victoria, no. 9868 of 1982 (unreported), *Walsh v Victorian Football League* (1983) 74 FLR 207, *Carfino v Australian Basketball Federation* (1988) ATPR 40-985; and *Media, Entertainment and Arts Alliance v Marconi Fairfield Soccer Club*, Australian Industrial Relations Commission, Dec 1285/95 S Print M2565 (transfers within a league); *Adamson v West Perth Football Club* (1979) 27 ALR 475 (transfers between leagues); *Greig v Insole* (1978) 1 WLR 302 (an English decision involving World Series Cricket); *Hughes v Western Australian Cricket Association* (1986) ATPR 40-676; *McCarthy v Australian Rough Riders* (1988) ATPR 40-836; *Barnard v Australian Soccer Federation* (1988) ATPR 40-862; *Pay v Canterbury-Bankstown Rugby League Club Ltd* (1995) 72 IR 358; *Daley v New South Wales Rugby League Limited* (1995) 78 IR 257; *Penrith District Rugby League Football Club v Fittler* (unreported, NSW SC, 8 February 1996, BC9600163); *St George District Rugby League Football Club v Tallis* (unreported, NSW Sc, 28 June 1996 BC 9602844); *Australian Rugby League Ltd v*

course, was the decision of the European Court of Justice in *Bosman*, which found the retain and transfer system to be in conflict with the freedom of workers to move within the European community, as contained in the European Treaty.¹²

The courts have also rejected the argument that transfer fees compensate clubs for out of contract players who move to another club, for the training they have invested in the player. This line of argument was rejected by both Mr Justice Wilberforce in *Eastham* and Advocate General Lenz in *Bosman*. The former could not find any evidence that such expenditures had occurred, and the latter that no evidence had been presented linking the two. Most significantly, Advocate General Lenz said

Any reasonable club will certainly provide its players with all the development necessary. But this is expenditure which it is in the club's own interests and which the player recompenses with his performance. It is not evident why such a club should be entitled to claim a transfer fee on that basis.¹³

In 1975, in *Mackey*, Mr Justice Larson of the United States District Court Fourth Division (Minnesota), in a case involving American (gridiron) football said

the expense incurred in selection, training and development of professional football players is not unlike that of any other businesses which incur hiring

Cross (1997) 39 IPR 111; and *Carter v New South Wales Rugby League Limited* (1997) 78 IR 369 (the Super League cases).

¹² Case C-415/93 *Union Royale Belge des Societies de Football Association ASLB v Jean-Marc Bosman* [1995] ECR I-4921.

¹³ *Eastham*, at 436, *Bosman*, Lenz at paragraph 237.

and training costs. There is no right of compensation for this type of investment.¹⁴

In 2008, the Court of Arbitration for Sport, in a case involving the Scottish football player Andrew Webster, provided a different perspective on this training argument. It said there was no reason 'to believe that a player's value on the market owes more to training by the club than to a player's own efforts, discipline and natural talents'.¹⁵ In short, why should a club receive a benefit, in the form of a transfer fee, for a player who has become more skilled because of his 'own efforts, discipline and natural talents' when he moves to another club?

There is a more basic problem, however, with the notion of 'training' as employed in football and sport more generally. A distinction will be made here between 'training' and 'practice' or 'preparation' and the question of when does one stop being a trainee and become an employee? Training involves a situation of formal instruction as is provided by an educational institution such as a school or university. In football terms, training would occur at an academy with accredited instructors.¹⁶ Practice or preparation is what one does in the performance of one's employment duties. There are things that need to be done in a specific or defined context and employees practice

¹⁴ *Mackey v National Football League*, 407 F Supp. 1000 (1975), at 1008.

¹⁵ Court of Arbitration for Sport, CAS 2007/A/1298 *Wigan Athletic FC v Heart of Midlothian*; CAS 2007/A/1299 *Heart of Midlothian v Webster & Wigan Athletic FC*; CAS 2007/A/1300 *Webster v Heart of Midlothian*, 30 January 2008, at paragraph 142.

¹⁶ And we will ignore here the problem of trainees or their parents paying fees to such academies for their training.

or prepare for these occasions. Such practice and preparation may involve help and advice from supervisors or co-workers. What is the best way to do the task at hand? The demarcation between training and employment is the receipt of payment for the performance of tasks required by an employer. Hence, professional football players are not trainees. They are employees, whose skills, following *Webster* may be due to their 'own efforts, discipline and natural talents'. Professional players do not spend their time between games training. They devote such time at their clubs to practising and preparing for games.

In summary, the courts have found transfer systems to be unreasonable because they deny players the ability to find employment with clubs that are prepared to employ them. They have also rejected arguments that clubs should be compensated for the alleged training they have invested in players. It was also pointed out that training ends with the signing of a contract and what has been traditionally been regarded as training is in fact practice and preparation; that which occurs in all types of employment.

IV. Empirical Evidence

Leagues and clubs have supported transfer systems on the basis of helping to enhance competitive balance and to overcome problems with differences in the financial strength of clubs. The problem is that they have not been able to advance any evidence to support such a supposition. In Section I it was argued that a (uniform) salary cap system is more capable of achieving competitive balance than a transfer system. In seeking to test this proposition it will be first necessary to discuss the meaning of competitive balance.

A league will be said to have achieved competitive balance if over time all teams do equally well. This approach recognises that a team will win the league in any given year. Not all teams can be the champion in any season! If over time they achieve similar degrees of success then such a league could be said to have achieved competitive balance. This can be operationalised by examining the position of the respective teams on the league ladder over time. Their respective positions can be summed and divided by the number of years of the period under review. If these average scores gravitate to the middle, then sporting equality will have been achieved. If, on the other hand, there is a wide range of scores, or outliers, then competitive balance will not have been achieved. In an 8 team competition the average, or what will be called the cluster point, will be 4.5; for 10 teams 5.5; for 12 teams 6.5; 14 teams 7.5, 16 teams 8.5; and 20 teams 11.5.

The discussion so far has been conducted in terms of either a transfer system or a salary cap. There can be a mid point along this spectrum. That is where neither is in place. Australian sport witnessed the interchange of the English/European transfer system to the American salary cap. This transformation was not smooth and inevitable. There were periods in both rugby league and football when neither was in place. Given the negative analysis above concerning transfer systems, it will be postulated that a situation of not having a transfer system will enhance competitive balance in contrast to having a transfer system in place.

In the analysis which follows, the average place of various clubs in different competitions has been calculated on the basis of where they finished at the end of the

regular, or home and away season. No allowance has been made for the results of the 'finals' conducted in different competitions.

Table One on page 16 provides information on the average position of clubs in the English Premier League (EPL) for the period 1995/96 to 2009/10. 1995/96 was chosen as the starting point because this was when the EPL became a 20 team league. It operates a promotion and relegation system which has varied from 2 to 3 teams at different periods. Like virtually all European football leagues, the EPL operates a transfer system and does not utilise a salary cap. It provides a fairly stark example of a league which has failed to achieve competitive balance. Four clubs have dominated the league-Manchester United, Arsenal, Chelsea and Liverpool. Only seven clubs have played in the EPL in each of the 15 seasons covered by Table One. Six other clubs have been in the league for 10 or more years. The major function of the rest seems to be little more than making up the numbers.

Table One

Average Place of Teams in English Premier League: 1995/96 to 2009/10

Club	Years in League	Average Place
Manchester United	15	1.60
Arsenal	15	2.60
Chelsea	15	3.80
Liverpool	15	3.93
Aston Villa	15	8.07
Leeds United	9	8.78
Newcastle United	14	9.14
Tottenham Hotspur	15	9.33
Everton	15	10.67
Blackburn	13	10.69
West Ham United	13	11.30
Stoke City	2	11.50
Bolton Wanderers	11	12.09
Manchester City	10	12.20
Middlesbrough	13	12.31
Fulham	9	12.56
Leicester City	7	12.57
Charlton Athletic	8	12.88
Reading	2	13.00
Birmingham City	6	13.50
Wigan Athletic	5	13.60
Sheffield Wednesday	5	13.80
Portsmouth	7	13.86
Southampton	10	13.90
Wimbledon	5	14.20
Sunderland	9	14.89
Coventry City	6	15.50
Nottingham Forrest	3	16.33
Wolverhampton Wanderers	2	17.50
Ipswich Town	1	18.00
Sheffield United	1	18.00
Hull City	2	18.00
Burnley	1	18.00
Bradford City	2	18.50
West Bromwich Albion	4	18.75
Barnsley	1	19.00
Crystal Palace	2	19.00
Norwich City	2	19.00
Queens Park Rangers	1	19.00
Watford	3	19.33
Derby County	1	20.00

The (old) VFL operated a transfer system. It was found to be an unreasonable restraint of trade in *Foschini*¹⁷ at the end of the 1982 season. Table Two shows the average place of clubs in the period 1967 to 1982. If competitive balance had have been achieved in this period, the average position of clubs would have coalesced around the cluster point of 6.5. Table Two reveals that four clubs dominated the competition, Carlton, Richmond, Collingwood and Hawthorn, three teams were middle range performers and five also rans.

Table Two

Average Place of Clubs in Victorian Football League: 1967 to 1982

Club	Average Place
Carlton	2.75
Richmond	3.94
Collingwood	4.13
Hawthorn	4.75
Geelong	6.12
North Melbourne	6.12
Essendon	6.81
St. Kilda	7.31
South Melbourne	8.75
Footscray	8.81
Fitzroy	8.81
Melbourne	9.56

Following *Foschini*, there was a period of flux before the VFL developed a coherent strategy concerning how best to manage the league. It eventually decided to adopt a number of reforms which included a salary cap and a draft, as well as a decision to move from a Victorian to an Australian based league. Table Three examines the performance of clubs in the Australian Football League (AFL) from 1987 to 2010. 1987 is chosen as the starting point to account for the above period of flux and

¹⁷ *Foschini v Victorian Football League*, Supreme Court of Victoria, no. 9868 of 1982 (unreported).

because this was the year that the league expanded to a 14 team competition, with the entry of Brisbane and the West Coast Eagles. Extra teams were added in subsequent years-Adelaide, Port Adelaide and Fremantle. Fitzroy were dropped from the league at the end of 1996. We are testing Table Three to determine if a salary cap enhances competitive balance in comparison to a transfer system (Table Two). The league has averaged approximately 15 clubs in this period. The cluster point for competitive balance is 8.00.

Table Three

Average Position of Clubs in Australian Football League: 1987 to 2010

Club	Years in League	Average Position
Geelong	24	5.58
Port Adelaide	14	7.21
Essendon	24	7.21
North Melbourne	24	7.29
Hawthorn	24	7.58
Collingwood	24	7.92
Western Bulldogs	24	7.96
Sydney	24	8.00
Adelaide	20	8.05
West Coast	24	8.05
Carlton	24	8.25
St. Kilda	24	8.63
Melbourne	24	8.83
Brisbane	24	9.17
Fremantle	16	11.31
Richmond	24	11.71
Fitzroy	10	12.20

Table Three provides support for a salary cap in enhancing competitive balance. Twelve of the clubs have average scores in the range of more than 7 to less than 9. Excluding Fitzroy, there are only a few outliers, and they are not a long way from the cluster point of 8.00.

In 1959, the NSWRL introduced a transfer system. The High Court ruled against it in *Buckley v Tutty*.¹⁸ Tables Four and Five compare the average position of clubs in the 13 year period when the transfer system was in place with the 13 year period after that system was abolished. For the period covered by Table Four, the NSWRL mainly operated a 10 team league. The cluster point for competitive balance is slightly more than 5.50.

Table Four

Average Position of Clubs in New South Wales Rugby League: 1959 to 1971

Club	Years in League	Average Position
St. George	13	1.69
Manly	13	4.38
Balmain	13	4.62
Souths	13	4.69
Wests	13	5.83
Parramatta	13	6.69
Easts	13	7.00
Canterbury	13	7.15
Norths	13	7.15
Newtown	13	7.54
Penrith	5	9.40
Cronulla	5	9.60

Table Four provides another negative finding for transfer systems. The NSWRL was highly uncompetitive in these years. The League was dominated by one club – St. George. In fact, it won 11 premierships in a row from 1956 to 1966. Few (three) clubs are near the 5.50 cluster point.

¹⁸ *Buckley v Tutty* [1971] 125 CLR 353.

Table Five

Average Position of Clubs in New South Wales Rugby League: 1972 to 1984

Club	Years in League	Average Position
Manly	13	3.00
Easts	13	4.38
St. George	13	4.61
Parramatta	13	4.85
Canterbury	13	4.92
Souths	13	6.00
Wests	13	6.69
Cronulla	13	6.77
Balmain	13	8.46
Newtown	12	8.58
Norths	13	8.69
Canberra	3	10.00
Penrith	13	10.38
Illawarra	3	11.00

Table Five covers the period 1972 to 1984. For most of these years the NSWRL operated a 12 team competition. The cluster point for sporting equality here is slightly more than 6.50. The major change between Table Five and Four is that the one team dominance of St. George has been replaced by three to four teams sharing the spoils (and is somewhat similar to the VFL as displayed in Table Two). Only three teams are near the cluster point. The table provides some limited support for the proposition that a non transfer system performs better in terms of competitive balance than a transfer system.

Information has not been provided here concerning the period after 1984 for reasons of space. In the mid 1990s rugby league was wracked by the Super League war and a period of adjustment with a merged league called the National Rugby League (NRL). The NRL adopted a salary cap and became a 14 team competition in 2000. South Sydney was readmitted and teams from New Zealand and the Gold Coast subsequently joined the NRL. It is now a 16 team competition. In the period 2000 to

2010 it has, on average, been a 15 team competition. The cluster point for competitive balance is 8.00. The average position of clubs in this period is presented in Table Six. It provides overall support for a salary cap enhancing competitive balance, though not as strong as in Table Three for the AFL. Seven of the clubs are close to the cluster point.

Table Six

Average Position of Clubs in National Rugby League: 2000 to 2010

Club	Years in League	Average Position
Brisbane	11	5.00
Melbourne	11	5.91
St. George	11	6.36
Roosters	11	6.73
Parramatta	11	7.27
Newcastle	11	7.82
Bulldogs	11	7.82
Manly	11	7.82
New Zealand	10	7.90
Gold Coast	4	8.00
Canberra	11	8.73
Wests/Tigers	11	9.36
Cronulla	11	9.45
Penrith	11	9.91
North Queensland	11	10.45
Souths	9	12.44
Auckland	1	13.00

Australian football operated a transfer system. Following a successful action initiated by (the now named) Professional Footballers Australia before the Australian Industrial Relations Commission,¹⁹ negotiations between the parties largely witnessed the end of domestic transfer fees in 1996.²⁰ Tables Seven and Eight compare the average position of clubs during and after the use of transfer fees. Table Seven covers

¹⁹ *Media, Entertainment and Arts Alliance v Marconi Fairfield Soccer Club*, Australian Industrial Relations Commission, Dec 1285/95 S Print M2565.

²⁰ Ericsson Cup Collective Agreement 1996-1999.

the period 1977 to 1995/96. The size of the league varied over the years and made use of a promotion and relegation system. Clubs also experienced financial problems during these years. The league was unstable and there is a wide variance in the performance of clubs which serves to undermine and competitive balance claims concerning the transfer system.

Table Seven

Average Position of Clubs in National Soccer League: 1977 to 1995/96

Club	Years in League	Average Position
Sydney City	10	1.80
Melbourne Knights	13	4.46
Marconi	20	4.60
South Melbourne	20	4.65
Sydney United	13	5.31
Adelaide City	20	6.10
Sydney Olympic	19	6.37
St. George	14	6.64
Western Suburbs	2	7.00
Apia Leichhardt	14	7.29
Heidelberg United	17	7.41
Preston	13	7.69
Brisbane United	5	7.80
Morwell Falcons	4	8.25
Melbourne Brunswick	8	8.25
Newcastle United	7	8.29
Wollongong Wolves	13	8.54
Brisbane Lions	11	8.82
Parramatta Eagles	7	9.00
Newcastle Rosebuds	2	9.00
Penrith	2	9.00
West Adelaide	16	9.25
Inter Monaro	2	9.50
Sunshine George Cross	8	9.63
Canberra City	10	10.30
Blacktown	7	10.57
Brisbane City	10	10.61
Footscray	12	10.83
Newcastle Breakers	4	11.00
Green Gully	3	11.00
Canterbury	1	11.00
Mooroolbark	1	14.00
Wollongong Macedonia	1	14.00

Table Eight covers the last eight years of the NSL. For most of this period it was a 14 team competition. The cluster point for competitive balance is 7.50. Five of the clubs are near this point. The outliers in Table Eight are somewhat closer to the cluster point than they are in Table Seven. Like the situation in rugby league, football provides some limited support for the proposition that a non transfer system is preferable to a transfer system in terms of competitive balance.

Table Eight

Average Position of Clubs in National Soccer League: 1996/97 to 2003/04

Club	Years in League	Average Position
Perth Glory	8	3.25
South Melbourne	8	4.38
Carlton	3	5.33
Adelaide City	3	5.50
Olympic	5	5.75
Parramatta	8	6.20
Marconi	8	6.25
Sydney United	8	7.63
Brisbane	8	7.75
Wollongong	8	7.75
Melbourne Knights	8	8.25
Northern Spirit	6	8.50
Newcastle	8	8.63
Adelaide Sharks	3	10.33
Football Kingz	5	10.60
Collingwood	1	13.00
Canberra	5	13.20
Gippsland Falcons	4	14.75

As is well known Australian football transformed itself in the early years of the new millennium. FFA replaced Soccer Australia and the A-League the NSL. The A-League, as indicated above operates under a salary cap. Table Nine provides information on the average position of clubs over the first five years operation of the A-League. It started as an eight team competition; expanding to ten teams in 2009/10 (an eleventh team was included for the 2010/11 season). Five years may not be a long enough period to evaluate its success, especially in comparison with the other

competitions examined above. The cluster point for competitive balance is slightly more than 4.50. Four of the clubs are close to this point. Also, no dominant club as yet has emerged. Again, though, this may be because we do not have enough observations. Table Eight, on balance, provides tentative support for salary caps enhancing competitive balance.

Table Nine

Average Position of Clubs in A-League: 2005/06 to 2009/10

Club	Years in League	Average Position
Sydney FC	5	3.00
Gold Coast	1	3.00
Melbourne Victory	5	3.20
Central Coast Mariners	5	4.40
Newcastle Jets	5	4.60
Adelaide United	5	5.00
Queensland Roar	5	5.40
Wellington Phoenix	3	6.00
Perth Glory	5	6.20
New Zealand Knights	2	7.00
North Queensland Fury	1	7.00

In summary, the respective experiences of the EPL, VFL, NSWRL and NSL do not provide any support for the proposition that transfer systems enhance competitive balance. There is some empirical support that the removal of a transfer system in the absence of introducing other equalisation policies, such as a salary cap, has a positive, if somewhat, limited impact on competitive balance.²¹ On the basis of the experiences

²¹ Since Simon Rottenberg, 'The Baseball Players' Labor Market', *Journal of Political Economy*, LXIV (3) (1956), pp. 242-58, economists have maintained that systems with or without such controls such as a transfer system produce the same results, with the major qualification of economic rents accruing to clubs, away from players, under a controlled system. The results here slightly qualify this traditional stance of economists.

of the AFL and NRL there is support for the supposition that salary caps enhance competitive balance.

V. Summary and Conclusion

The FFA would be well advised to not proceed with a proposal to combine a transfer system with a salary cap. The existence of a transfer system acknowledges the inability of a league to tackle the problem of differences in the financial strength of clubs and the negative impact that this has on competitive balance. A salary cap represents an attempt by a league to confront this problem and, subject to good faith collective bargaining with a players' association, to develop a modus operandi to enhance competitive balance. The combination of the two will result in the transfer system undermining the competitive balance potential of salary capping. It will not resolve financial 'shortfalls' of clubs; it will only result in the recycling of revenue in clubs and lead to other problems in how to allocate recycled funds.

Transfer systems have been associated with malfeasance and corruption. Those who contemplate their reintroduction would be well advised to read the Stewart Report to discover the harmful effect such a system had on Australian football. The courts have also found against transfer systems as unreasonable restraints of trade and being in conflict with legislation which promotes competition. Courts have also rejected the argument that fees should be paid to compensate clubs for the so called training they have invested in players. This note has also rejected the training argument on the basis that 'training' ceases when a player signs a contract and becomes an employee. Also that which has been regarded as 'training' is nothing more than practice and preparation, something which is the lot of all employees.

Finally, an examination of the historical results of various competitions in Australia and the EPL has revealed that competitions based on transfer systems have not enhanced competitive balance; they have been very unequal. On the other hand, both the experience of the AFL and NRL provide support for salary caps enhancing competitive balance. The A-League has been operating for five years. Its results provide tentative support for a league which is evolving towards one which will attain competitive balance. The worst effect of superimposing a transfer system onto the salary cap is that it will stop this evolutionary process and return Australian football to the dark ages of the NSL.

Bronte, 15 November 2010.