



**SUBMISSION BY THE AUSTRALIAN FOOTBALL LEAGUE
TO THE SENATE SELECT COMMITTEE ON THE ABORIGINAL FLAG
(18 September 2020)**

Introduction

1. AFL is the National Sporting Organisation and governing body of Australian Football.
2. AFL organises, conducts, promotes and manages the AFL elite men's competition involving 18 AFL Clubs and the AFLW elite women's competition involving 14 Clubs.
3. Australian Football is Australia's iconic football code and the most popular sport in the country. The strength and popularity of Australian Football is built on the foundation of a strong community football network consisting of over 1.8 million regular participants in 16,400 clubs and 3,000 community football leagues and competitions.

Australian Football and Aboriginal and Torres Strait Islander communities

4. Aboriginal and Torres Strait Islander people share a long heritage in the game and are known as some of the most skilled, exciting and popular players in the AFL. Over 10% of players in the AFL competition today are Aboriginal or Torres Strait Islander. Australian Football has played a part in positive social change for many people and communities.
5. AFL shares the national responsibility to "Close the Gap" for Aboriginal and Torres Strait Islander people and actively works to promote positive outcomes for Aboriginal and Torres Strait Islander communities through football. To support closing the gap, AFL industry bodies (AFL House, State bodies and Clubs) have launched Reconciliation Action Plans in recent years.
6. AFL invests in a range of programs such as leadership and development programs for young Aboriginal and Torres Strait Islander footballers (Flying Boomerangs / Woomeras), education and training opportunities (Footy Means Business) and runs football competitions in remote communities.
7. These programs and opportunities return social value through the development of a stronger cultural and social confidence to lead, increased self-reported physical and mental health benefits, increased education and employment opportunities and positive behaviour changes.
8. In North Queensland, the AFL Cape York House provides educational, employment and training opportunities for young Indigenous men and women in a safe and secure residential environment. In Darwin, the Michael Long Learning and Leadership Centre delivers education programs for Indigenous students from remote areas, with a focus on improving outcomes such as school attendance, engagement and behaviours, completion of secondary education, work readiness and awareness of opportunities.
9. Australian Football has consistently been able to achieve or significantly boost many of Government's health and safety objectives with Aboriginal and Torres Strait Islander communities.

Australian Football League

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Recognising and celebrating the contribution of Aboriginal and Torres Strait Islander people in the AFL

10. AFL recognises that racism on and off the field has a traumatic effect and damaging impact on Aboriginal and Torres Strait Islander people. To combat such impacts and ongoing challenges (particularly the more recent yet insidious phenomenon of racism via online activity) the AFL has for many years sought to highlight and celebrate the extraordinary contribution of past and present Indigenous players and other participants in our game.
11. Since 2005 the AFL has annually played the “Dreamtime at the ‘G” match between Richmond and Essendon and since 2007 has played an “Indigenous Round” of matches (now named the Sir Doug Nicholls Round in honour of the former player and Governor of South Australia) before massive crowds and incorporating various cultural activities that focus on the contribution of Indigenous people to our game and Australian society more generally. From 2021 there will be an Indigenous Round in the AFLW.
12. An important feature of the Sir Doug Nicholls Round is the proud celebration of the contributions of Aboriginal and Torres Strait Islander peoples across the code, at all levels. This occurs with the prominent display of the Aboriginal and Torres Strait Islander flags on the playing surface of all grounds hosting matches over the round and by the Clubs donning unique jumpers featuring Indigenous designs and often bearing representations of the Aboriginal and Torres Strait Islander Flags.
13. The depiction of the Aboriginal Flag in the centre circle in particular has become closely associated with Sir Doug Nicholls Round and is fondly regarded by Indigenous and non-Indigenous supporters alike.
14. As part of the collective licensing program that the AFL conducts on behalf of itself and the AFL Clubs, the AFL derives royalties from the public sale of those jumpers which are entirely directed to AFL Indigenous programs (some of which are described above).

Aboriginal Flag copyright and the AFL

15. AFL recognises that the Aboriginal Flag is a globally recognised symbol of the Aboriginal people of this country and their struggle for rights, recognition and respect in this country over many generations.
16. AFL further recognises and respects that Aboriginal artist, Harold Thomas, is the author of the design of the Aboriginal Flag and is the owner of the copyright subsisting in that artistic work (**Aboriginal Flag Copyright**). AFL observes that, as the owner of the Aboriginal Flag Copyright, Mr Thomas is legally entitled to commercialise the use of the Aboriginal Flag including by requiring persons using the Aboriginal Flag to pay a fee to him or to persons whom he has granted a licence to.
17. AFL understands that Mr Thomas has currently granted licences to the following entities:
 - a. Carroll & Richardson – Flagworld Pty Ltd in respect of reproduction of the Aboriginal Flag on flags and pennants, banner and bunting (**C&R Licence**);

- b. WAM Clothing Pty Ltd in respect of reproduction of the Aboriginal Flag in all other respects not covered by the C&R Licence, namely on clothing, physical media and digital media (**WAM Licence**).
18. Having been made aware the C&R Licence and the WAM Licence, the AFL is committed to not act contrary to the rights held by Mr Thomas and his licensees in relation to the Aboriginal Flag Copyright. In that regard:
 - a. AFL agreed to the terms of a commercial licence with Carroll & Richardson (which at that time was the relevant licensee) for depiction of the Aboriginal Flag in the centre circle of grounds hosting matches over the 2019 Sir Doug Nicholls Round;
 - b. AFL previously pursued commercial negotiations with WAM Clothing in relation to the AFL's use of the Aboriginal Flag on 6 guernseys for the 2019 Sir Doug Nicholls Round. Those negotiations did not result in any agreement between the parties and are not actively pursued by either party at the present time;
 - c. in early 2020, the AFL initiated discussions with WAM Clothing (which by that time was the relevant licensee) in respect of the depiction of the Aboriginal Flag in the centre circle of grounds hosting matches over the 2020 Sir Doug Nicholls Round. WAM Clothing was amenable to a commercial licence on the same terms as previously agreed with Carroll & Richardson in 2019, however the AFL did not pursue those negotiations (see further below).

AFL Position in relation to Aboriginal Flag

19. AFL sought and received guidance, direction and advice from the AFL Aboriginal & Torres Strait Islander Advisory Council in respect of its position on the Aboriginal Flag.
20. AFL has agreed that it will purchase all depictions of the Aboriginal Flag on flags, pennants, banner or bunting (**Flag Form**) from Carrol & Richardson – Flagworld Pty Ltd. As the Aboriginal Flag was proclaimed as a “flag of Australia” under the *Flags Act 1953* (Cth) we understand that any person can display the Aboriginal Flag in Flag Form without permission of the copyright owner. AFL has no concerns or complaint with the arrangements as apply to the use of the Aboriginal Flag in Flag Form.
21. In contrast, AFL does have concerns with respect to the current situation as exists with the use of the Aboriginal Flag in all other respects (i.e. other than in Flag Form), say on apparel.
22. As noted above, AFL has previously entered into commercial arrangements or negotiations with Mr Thomas or his licensees for depiction of the Aboriginal Flag in the centre circle for Sir Doug Nicholls Round matches and depiction on guernseys. AFL is a not for profit entity and is currently facing financial challenges as a result of COVID-19 impacts but, in general terms, the AFL is financially able to enter into such arrangements, so long as reasonable commercial terms are available and agreed to.
23. However, AFL is most concerned that the commercial terms sought by WAM Clothing with respect to the use of Aboriginal Flag by all potential users of it are either not reasonable and/or

are not affordable by many persons, in particular Aboriginal people and enterprises, who seek to celebrate their indigeneity through the proud display of the Aboriginal Flag in many forms.

24. AFL recognises that, by entering into commercial agreements with WAM Clothing for use of the Aboriginal Flag, such arrangements may facilitate the AFL's own use of the Aboriginal Flag but may ultimately support the general operation of arrangements as they apply to others and that may preclude the use of the Aboriginal Flag by many persons, in particular Aboriginal people and enterprises. In other words, AFL is concerned that by entering into such commercial arrangements it may be indirectly disenfranchising persons without equivalent resources, including Aboriginal people and enterprises, from using the Aboriginal Flag.
25. To that end, for the 2020 Sir Doug Nicholls Round, AFL determined not to enter into commercial arrangements with WAM Clothing such that:
 - a. the Aboriginal Flag was not displayed in the centre circle of grounds hosting matches; and
 - b. Indigenous jumpers did not display the Aboriginal Flag.
26. To some extent, the AFL highly regrets this outcome. As noted, the Aboriginal Flag is a source of pride and is of immense symbolic significance to Aboriginal people and in the broader community. Its absence, in particular in the centre circle of the ground, was felt heavily, in particular given that the Dreamtime match was played in Darwin in front of many Indigenous people who would not otherwise have an opportunity to be present at that special match. Whilst the location of the Dreamtime match was as a result of special arrangements applying to the 2020 Toyota AFL Premiership Season due to COVID-19, it was a particularly special staging of the fixture that was well received by the local community and the large television audience.
27. However, the AFL took that step in order to draw attention to this situation, with such focus heightened by the involvement of most AFL Clubs in support of the related Free The Flag movement.

The way forward with respect to use of the Aboriginal Flag

28. Absent a change in present arrangements that apply to the use of the Aboriginal Flag, the AFL is concerned that there will be ongoing decreased use of the Aboriginal Flag. The AFL sadly acknowledges that it will not use the Aboriginal Flag, other than in Flag Form, absent a change in arrangements.
29. AFL welcomes change that would facilitate use of the Aboriginal Flag, particularly by Aboriginal people and enterprises, without cost or on reasonable terms. Further, AFL welcomes change that would facilitate non-commercial use of the Aboriginal Flag, say the celebration of Aboriginal culture as occurs in the AFL over Sir Dough Nicholls Round and the AFLW Indigenous Round, without cost or on reasonable terms.
30. AFL does not make any submission as to the appropriate means by which such use on those terms can be facilitated.