



Professional Women's Football: The Next Step



Background

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The purpose of this document is to provide a vision for the Women’s Professional Game; its optimal structure, its positioning within the global architecture of football and its deep integration with Australia’s national team, the Matildas.

The vision is shaped by a set of principles. Principles that are anchored in valuing fairness and genuine opportunity. Football as the global game has a self-evident responsibility to promote the benefits of the principle of gender equality to ensure the sport’s administrators have the necessary social licence to operate.

Context will ensure there are differences in how the values of fairness and genuine opportunity looks for footballers of different genders. However, there is simply no reason to abandon these principles and values to work in any other way. Instead we must use them as the standard by which we filter our decisions and assess actions.

The W-League competition, along with the Matildas, is capturing hearts and minds of both football purists and the broad Australian public. The W-League competition embraces the game’s

virtues whilst continuing to deliver a product that builds the value of the Clubs and recognises the players as professionals. As momentum for women’s sport builds both domestically and globally and the competition for talented athletes intensifies, the W-League needs to define its ambition and the role it wants to play in shaping the game, the role of women and Australia itself.

The other head of the dragon is the Matildas. With the Socceroos – football’s national teams resonate amongst the Australian public. They are among our most loveable and recognisable national teams.

There is a sense of public ownership of the Matildas that is unique across women’s sport and can undoubtedly act as an anchor for the promotion of the sport’s values and as a bedrock for the unity and equilibrium that Australian football so needs.

The pillars of this vision are as follows:



The Principles



Global Leadership



The Professional Women’s League

- a) Partnership with NWSL
- b) World’s Best
- c) Talent Development to attract Global Brands



Creating a Model for the Future: Equality for International Women Footballers

The Principles

The Women's professional game has made the transition from corporate social responsibility to high performance.

For the game to build on its momentum, clear guiding principles need to be established. Principles that deliver equity for women within football and echo across all levels of the game.

This will enable all parties to have a framework through which to conduct their discussions, frame their decisions and benchmark their outcomes.

These principles, in no particular order, are as follows:

1. Regulation

Anchor base remuneration of Women footballers to that of Men

A payment framework applicable to the Professional Clubs and National team units, that is sustainable, with an articulated process and timeframe for the achievement of pay equality.

2. Standards

Minimum Standards must be equal across the Sport

Implementation of best performance standards that cut across the physical resources provided, exercising the same level of care thought and concern regardless of gender.

3. Professional Player Development

Building a model for the development of female athletes, so the pathway recognises the unique challenges of women pursuing elite professional football careers

A model that accounts for the competing demands – non-football work, study, national team and Club(s) commitments.

Funding that allows for efficient and effective care of females within the confines of the Player Development Program.

Research initiatives that focus on specific areas of concern, including but not limited to the seismic shift from amateur to professional and the impact this transition has had on player's wellbeing.

4. Scheduling

Harmonising the competing demands on players from various teams e.g. National team, W-League & International competitions

Developing a season window that facilitates the integrity of the W-League competition – such as a move to a full home and away series.

Working with the players to develop an international schedule that drives the Matildas brand and their international standing - but is compatible with health, wellbeing and overall performance.

5. Infrastructure

Access to bespoke infrastructure that cultivates an authentic experience for players, coaches and fans

Appropriate and fair access to venues that ensures optimal football outcomes, fan outcomes and safeguards core requirements such as privacy and safety.

6. Commercial

Only by maximising commercial outcomes & investing in the sport can the game retain & attract the best talent

The Women's football brand must be recognised and positioned appropriately, with an equitable level of thought, care, alignment and sentiment.

Partner alignment with those that are committed to or already championing equality. Structuring deals that are transformative and not gendered.

7. Investment

The game is indivisible and its parts interdependent. The absolute integration of the Players, Clubs, Men & Women will determine the game's sustainability, commercialisation and footballing success

Prioritised and sustained investment in improving the visibility, connectivity and mass-appeal of the Professional Leagues and National Teams. More female participants mean more committed fans¹ and they need the opportunity to identify with our players and teams. The dividends from this investment will be both economic and social.

8. Governance

Lives are impacted by the game's decisions. Maintaining a voice for women that drives accountability & contributes to diversity is fundamental

Establishment of recognised committees, with representation from all parties, to address and improve fundamental aspects of the professional competition and National Team programs. Coupled with accountability mechanisms, to track progress.

9. Culture

A values-driven culture that promotes a unity of purpose which values all trophies and honours equally

A proven approach that illustrates respect and opportunity by valuing all trophies and honours equally, forging a uniformed identity – that no competition or team matters more than any another.

¹ Research from GEMBA indicates that "Participation drives Fandom", with past and present players more likely than non-player to consume the sport (3.6x), attend a match (4.0x), become a paid member (2.8x) and subscribe to a streaming service (3.7x)

The Professional Women's League

The W-League has reached a critical and exciting juncture.

Football clubs and sporting nations have awoken to the value of not only women's football, but women's sport.

Over its recent history, the W-League has symbiotically existed with the National Women's Soccer League (NWSL), more through happenstance than planning, achieving alignment in some decisive areas:

- complementing season windows;
- player migration between both competitions;
- existing relationships between Clubs, with the execution of loan deals;
- the similarities in the style of play between both leagues and countries;
- a yearly calendar of football for players; and
- maximises the earning potential of players.

This relationship has borne fruit for the W-League, however, there is no safeguard to ensure this symbiosis can continue, particularly as the NWSL becomes more internal in focus. For example, the plotted short-term trajectory for the NWSL is to

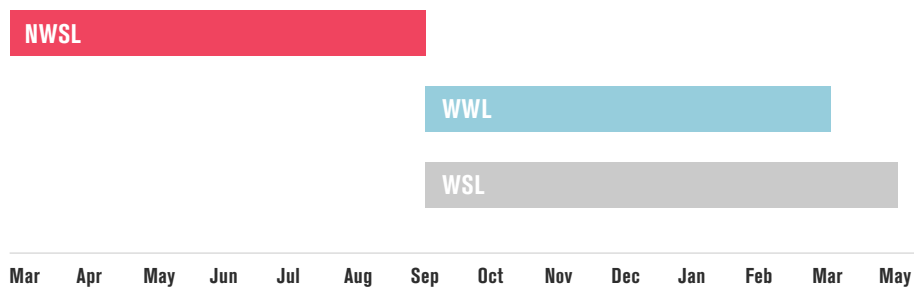
expand the length of their season which would have a correspondingly negative impact on the season window that exists for the W-League.

The clear threat to the W-League and NWSL is the emergence of Europe. Women's Football teams have captured headlines as they start to transition out of the shadows of their male counterparts, professionalise to the level required to dignify the career of Women footballers and leverage the power and influence of cultural icons that transcend football.

The W-League needs to determine its purpose, build its value and find its place in the global football economy. In doing so it needs to consider and find a solution to a number of challenges. These include: building a critical mass of elite players; ensure clubs take a long term view on investing in women's football; balancing the competing demands of players (between national team and club football); a shape-shifting season window; competitive balance within their league, and the ability to attract and retain the best global talent – particularly as European women's football pursues an aggressive growth strategy.

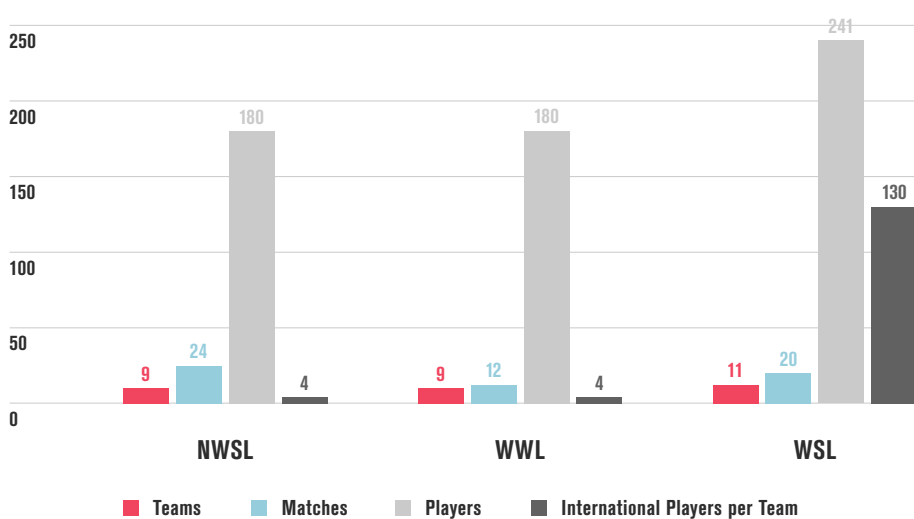


Season Window 2019/20



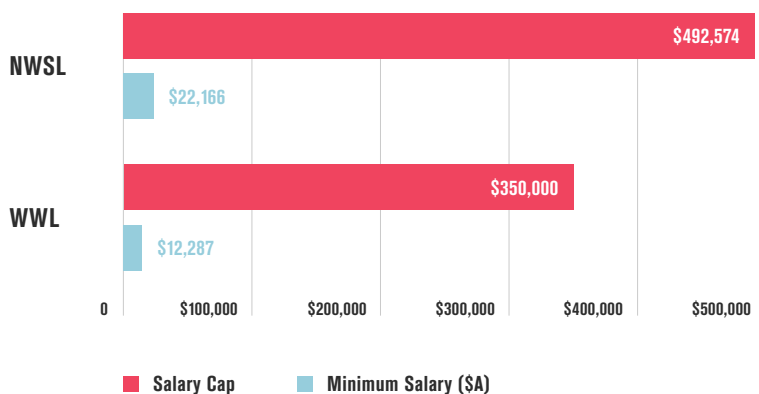
Data Source: <http://www.nwslsoccer.com> | <http://www.thefa.com>

League Comparison 2018/19 Season



Data Source: <http://www.nwslsoccer.com> | <http://www.thefa.com>

League Remuneration Comparison 2018/19 Season

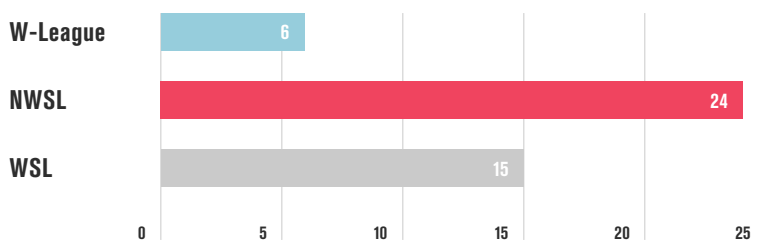


Data Source: <http://www.nwslsoccer.com> | <http://www.thefa.com>

WSL teams are currently allowed to use 40 per cent of their annual turnover on wages under the FA rules. The average salary across the league is **\$47,855**



Top 100 best female footballers in the world 2018 (*The Guardian*)



Data Source: <https://www.theguardian.com/football/ng-interactive/2018/dec/04/the-100-best-female-footballers-in-the-world-2018>

Option One: Partnership with the NWSL

Under its current format, the W-League comprises a nine-team competition, with a twelve-match season proper (not inclusive of finals), over a five-month window from September to February.

This competition model is built around the Matildas and works in with the NWSL. With the majority of contracted Matildas switching between the NWSL and the W-League, players can maximise their earning potential and commit to a year long calendar of football. This system has also proved favourable for international players within the NWSL, allowing them to continue their footballing pursuits through the W-League.

Whilst the W-League benefits from the current model of the NWSL, there is no structure to this relationship and the W-League remains vulnerable to changes. For example, NWSL players (including Matildas and US Nationals) play in the W-League through player loan arrangements from NWSL to W-League Clubs. The problematic contracting model within the NWSL can cause consternation for the W-League, such as allowing the NWSL to recall players at any stage they see fit – which can materially undermine the W-League competition. Another is the ability of the NWSL to make unilateral decisions on its competition, season to season, which cause a ripple into our own work within women's football. Most recently, the NWSL understandably shifted its competition window to accommodate the FIFA Women's World Cup which is taking place in France in June 2019. While this may superficially be a one-off change, this capacity to shape-shift combined with an aggressive expansion strategy will see the competition have broader and deeper impacts on our own calendar.

The implication of this is two-fold. Firstly, Australia's best players will have to decide which league they play in and, secondly, it severs the opportunity for NWSL players to participate in the W-League.

On balance, it would be difficult for the W-League to compete. Head to head, the NWSL is

The Next Step, provides three legitimate models to be considered and explored to overcome the mentioned challenges and enliven the W-League One, work in alignment with the NWSL through a formalised relationship (and so ensuring the integrity of both competitions remain), two, go head-to-head and deliver the best professional Women's League, globally. Or three, develop the pre-eminent pipeline to the leading football clubs of Europe (and in turn drive our elite players to higher levels).

more competitive, plays more games and the remuneration on offer to players is greater.

The W-League has made significant headway both on and off the pitch. 2017 saw the introduction of a W-League CBA, providing players with contract protection, a minimum wage and enhancing the conditions and standards, elevating the level of professionalism provided to and expected of the players. 2018 provided full exposure for the W-League, with Fox Sports coverage of all 57 matches, over designated channels and streaming platforms, culminating with the sale of rights to American Broadcaster ESPN+ delivering 17 live W-League matches, prime time for American viewers.

These competitive advantages are just two of the many that could exist, if these two leagues turned their ad hoc relationship into a partnership. Doing so would strengthen the competition of both leagues, allow for the development and emergence of talent, maintain the integrity of both competitions while ensuring the health and wellbeing of the players (through dedicated and respected break periods), remunerate players to a level allowing them to be modern professional footballers, maximising the commercial value of both leagues and amassing the good will built by dedicated fans, by giving them the opportunity to continue to support their teams and players on both continents.

Ultimately, the W-League is best served through a formalised agreement with the NWSL. The focus should be on preserving the status of both competitions, ensuring it can offer an attractive 12-month proposition to exceptional women footballers, provide valuable economies of scale and enable our leagues to take on the best clubs in Europe.

Adopting this approach will require a commitment from the Member Federations to strengthen their National Women's Premier competition to cater for the elite female pathway.

Option Two: The Best Global Women's League

The W-League is one of the longest standing and most developed global Women's Leagues, behind only Germany and Sweden (if we exclude America's failed attempts).

The league has evolved from humble beginnings (with direct operational management sitting with Member Federations) toward a far more sophisticated operation. The strategic decision by the FFA to maintain the colours and branding of the professional men's Clubs, in the A-League has established a point of difference. By 2015 all professional Clubs commanded stewardship of their women's team, improving connection between clubs and providing the necessary resources that a professional team requires to operate.

The pending establishment of an independent professional league creates an opportunity to elevate the unique proposition that coupling the W-League and A-League teams presents. This would create the only professional competition male or female where the Clubs have direct ownership, requiring all professional clubs to have a professional women's set up. Administered in accordance with the abovementioned principles and with a clear strategic focus, backed by robust commercial partners, the W-League has the potential to outshine any other professional female competition.

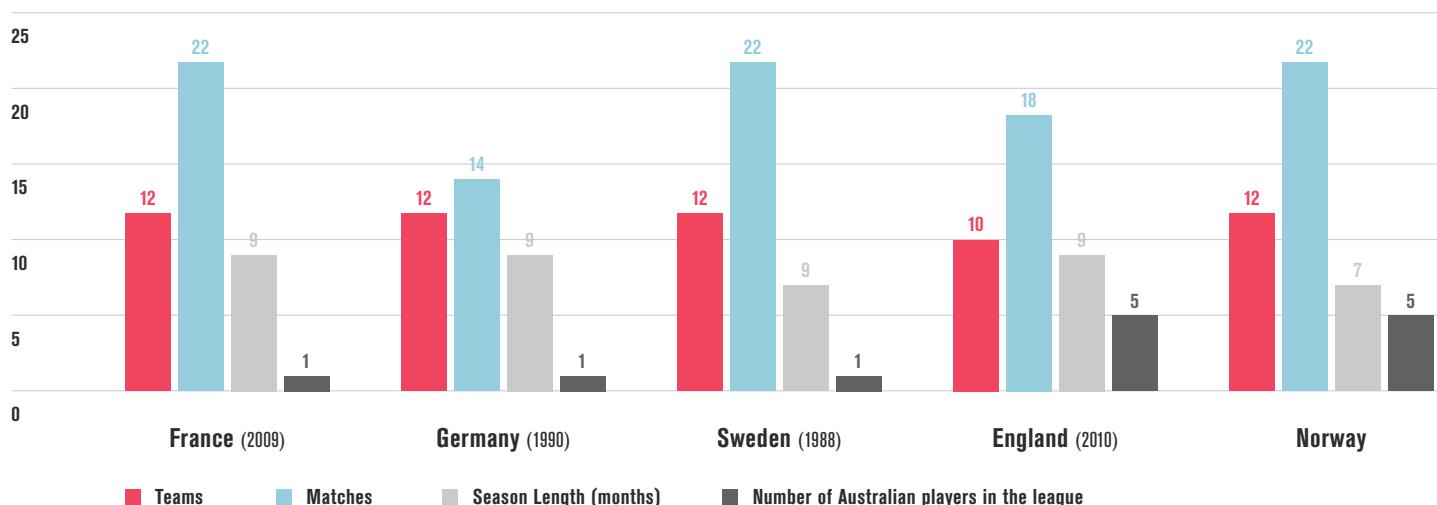
The PFA has played a significant role in monitoring the performance and operational deficits within the W-League and through the CBA is working in close alignment with the FFA and the Clubs to ensure the performance standards and performance models which are afforded to the players are enhanced year on year.

In terms of the evolution of the W-League, the players expressed three key areas of focus through the CBA process, being

- a) A minimum wage;
- b) Visibility – all games broadcast;
- c) Competition integrity – full home and away season.

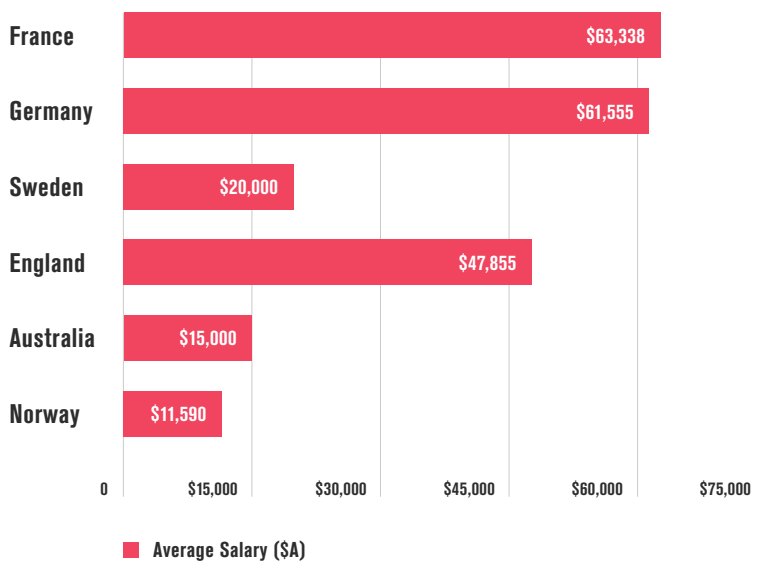
Both A and B have been delivered with C conditional on financing and the league's strategic direction.

Competing Leagues 2018/19



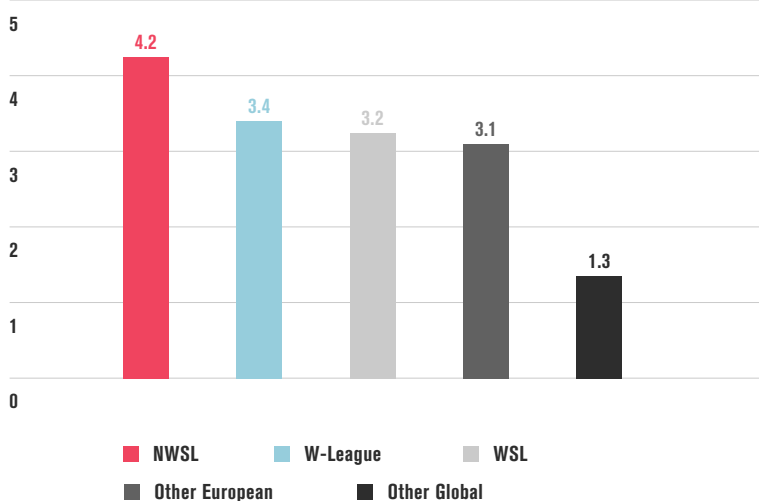
Data Sources: <https://www.fff.fr> | <https://www.dfb.de/en/en-start> | <https://www.svenskfotboll.se> | <http://www.fawsl.com/index.html#hOJ6XVFZUGs80Z0.97> | <https://www.fotball.no>

Competing Leagues Remuneration Comparison 2018/19 Season



Data Sources: <https://www.fff.fr> | <https://www.dfb.de/en/en-start> | <https://www.svenskfotboll.se> | <http://www.fawsl.com/index.html#hOJ6XVFZUGs80Z0.97> | <https://www.fotball.no/>

League Assessment - If you could play in any league in the world, rank the following leagues in order of preference (weighted score out of 5 shown)



Data Source: PFA's 2018-19 W-League Annual Survey

The challenge faced by players and Clubs in deciding to build the best professional global women's league will be an immediate increase to the number of games played, a considerable uplift in the level of remuneration and establishing elite environments.

Entering an investment phase requires absolute commitment and patience.

Options available to ensure that Australia's and the world's most talented footballers remain in the W-League include: creating an aggressive centralised contracting system where FFA works with W-League clubs²; a global marquee player strategy understanding the capacity to elevate the level of players with a relatively low investment³; long term contracts to players; whole of football ambassadors⁴.

The W-League has enormous potential to position itself as a pre-eminent global football competition. As an industry, we need to determine which strategic position(s) to take.

- 2 Having, at a minimum 22 contracted Matildas players on premium W-League contracts. This would allow for established Matildas to have a fixed premium and that part of their contract allocation sit outside the salary cap, with the allocated players contract premium provided by the FFA. Players would have the opportunity to negotiate above the premium, with any uplift met by the Clubs. The FFA would determine which players are allocated premiums and the standing of the premium payments e.g. a tiered model with no less than 11 players on Tier one.
- 3 Tapping into the broadcast marquee funding to further enhance the ability to entice leading female players to the W-League or retain exceptional domestic talent.
- 4 Aggregate the resources of the entire football community to employ players within grassroots football. They can tell their stories or contribute to the growing of the sport at all community touch points.



Option Three: Developing a Talent Pipeline into the Big Leagues

The rise of Women's Football in Europe hasn't gone unnoticed. Global powerhouses from Manchester City, Chelsea, Arsenal, Juventus to Paris St Germain, to name but a handful, have strategically invested exponentially in their women's programmes. More young Australian footballers connect with these clubs than the professional Clubs in their own backyards.

The aspiration to wear the Chelsea blue, or the black and white stripes of Juve, can help safeguard and enhance the international competitiveness of our national teams. Integrating that aspiration within our own pathways is critical to developing our most talented to the level required.

The W-League in its present form faces several strategic challenges. Firstly, the perception of diluting quality with a large number of players leaving the league to pursue options elsewhere. Secondly, the increase in appetite across all players to pursue a full-time football career. Thirdly, harnessing the developing public interest in women's football. Fourthly, the challenges of a 'bump-in-bump-out' women's football program. Finally, ensuring that our international teams continue to improve against the rising tide of quality across the world.

Our current structure does not have the capacity to achieve this. To overcome the strategic challenges

outlined above and to achieve our objective of developing internationally competitive and coveted footballers, harmonising our fragmented pathways is fundamental.

Central to this are: creating a 12-month programs with our elite and professional clubs; designing a year-round (12 month) model of competition which integrates existing National Premier League Women (NPLW) competitions; and ensuring the W-League continues as a competitive global league – continuing the momentum that it has been for over a decade.

The initial step in allowing for a year-round model competition is to symbiotically align the state-based NPLW competitions with the annual programs that sit within professional clubs.

There is already significant synergy between the two. Player cross-over is one such synergy with 117 of the 181 players in the 2019/20 W-League squads emerging from NPLW teams. Of these, 90 of the 117 will return to their NPLW teams after the completion of the 2019/20 W-League season.

Another synergy is the move towards professionalising NPLW contracts by many Member Federation Clubs, affording the smooth transition of players between the NPLW and the W-League.



In order to build their capacity to provide a complementary competition across a 12-month calendar, Member Federations will need to strengthen their NPLW competitions. Enhancing and entrenching professionalism requires investment in the equitable access to facilities and resources, coaching and support staff, and talent management programs.

An annualised schedule that integrates the W-League and NPLW is fundamental to building an elite player development and retention model that will:

- maintain the ongoing activity of the majority of the W-League squads by engaging W-League head coaches on a full-time basis
- grant players access to professional club resources and facilities of the professional clubs with fundamental protections, such as medical, player development and insurance, offering both security and protection.
- Provide the professional Clubs access to players commercial rights and the ability to engage them over a longer period.

This model creates a new look season window for the W-League, which could incorporate an extended W-League Finals Series and the addition of a Cup competition.

An extended W-League finals series alongside a formal NPLW and W-League Cup FFA competition, with W-League teams entering at the final stages of the Cup once their W-League seasons conclude, with the absence of foreign players (and potentially Australian players with pre-existing NWSL contracts) ensuring a measure of competitive balance.

The benefits of the concepts would be to build cohesive talent pathways, ensure more guaranteed minutes for W-League and NPLW players and continuing to foster the relationship between the W-League and NPLW.

Through integrating an established elite product, the W-League, with a stable state based club structure, Australian football is well-placed to build a cohesive model that connects Australian players to iconic football brands and our clubs to the global football economy.

Even without planning, our game has produced players worthy of global giants – Chelsea, Bayern Munich, Arsenal and Everton – and there are many more giants of world football that can undoubtedly be reached by our talented women players. It goes without saying the enormously positive impact this will have on our national team.

Sam Kerr attracted global headlines with her blockbuster move to Chelsea, Catlin Foord followed suit making her way to Arsenal. The aspiration that this drives for young women is priceless and the potential it creates beyond empowering our women footballers and teams is powerful.

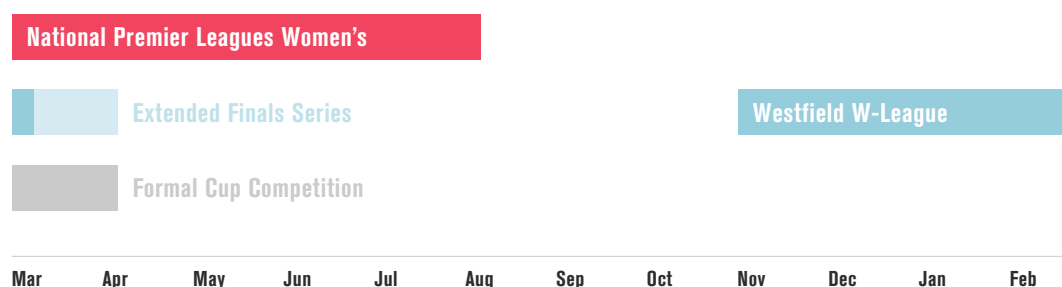
Firstly, Transfer fees in women's football are on the rise with 833 international transfers concluded in 2019, resulting in a 16.3% increase in player spending. Most recently, Ellie Carpenter was transferred from Portland to the world's best club, Lyon. By investing and securing talent, there might be a market for our players among international Clubs.

Secondly, for our elite Clubs, there may be scope to establish relationships with influential international clubs through our joint commitment to women's programs that has the potential to open the door more broadly for Australian football.

Thirdly, our capacity to build the value of our local player and local clubs within Australia through the brand equity in iconic football clubs is enormous.

To turn this aspiration, however, into a reality for women players we need to build a cohesive and visible pathway for them.

New Look W-League Season Window Model



Global Leadership



The value of women's football cannot be realised without a global shift.

The breadth and depth of football globally is unparalleled. It ensures that the empowerment of women can be achieved exponentially by the global football family providing strategic and genuine investment and creating incentives for women to become leaders within football – on and off the pitch.

Through its values and personnel, the PFA has developed a deep commitment to advocate positively and drive global outcomes for players – from freedom for contracting to health and safety to the embedding of human rights.

Presently, no issue resonates more acutely amongst the members and the organisation than the inequality that persists between male and female footballers. The most glaring evidence of such inequality exists in the allocation of prize money by FIFA for their showcase tournaments, the Men's and Women's World Cup. FIFA as the governing body has a responsibility to redress the past underinvestment and lack of equity, redressing generations of exclusion and discrimination towards female footballers.

FIFA has made a commitment to gender equality, non-discrimination and respecting all internationally recognised human rights through its Statutes. FIFA's objectives of FIFA Article 2, 3 and 4 are clear.

At Article 2:

- *"to use its efforts to ensure that the game of football is available to all and resourced for all regardless of gender or age"; and*
- *"to promote the development of women's football and the full participation of women at all levels of football governance".*

At Article 3:

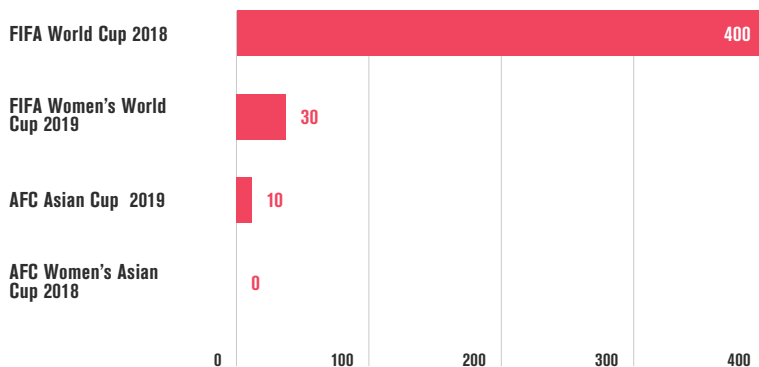
- *"all internationally recognised human rights" and to "strive to promote the protection of these rights"; and*
- *those rights encompass protection from gender discrimination, with it being identified by the FIFA Human Rights Policy, May 2017 edition as a "salient human rights risk". According to that policy, "FIFA places particular emphasis on identifying and addressing differential impacts based on gender and on promoting gender equality".*

At Article 4:

- *include the words "gender equality" in the heading of Article 4, which unambiguously prohibits discrimination against "a private person or group of people on account of... gender".*

It is now incumbent on FIFA to uphold their constitutional commitment. Such commitment is not addressed by increasing the inequality between male and female footballers, which FIFA has done in its allocation of World Cup prize-money.

FIFA & AFC Prize Money Comparison (\$USm)



Data Source:
<https://www.fifa.com> | <http://www.the-afc.com>

FIFA has recently announced a doubling of the Women's FIFA World Cup 2015 prize money for France 2019, offering a purse of US\$30 million – a figure that equates to 7.5% of that paid for the FIFA Men's World Cup Russia 2018. This increases the prize money gap between the women's and men's tournament by US\$27 million between 2014 and 2019. Such underinvestment in women's football occurs whilst FIFA boasts a record cash reserves of US\$2.88 billion and revenues of US\$6.4 billion in the four-year period covering the 2018 World Cup.

True outcomes for women's football can only be achieved through advocacy at the global level – advocacy that not only addresses the historical underinvestment in women's football that has curtailed its financial growth but provides incentives for the players and nations of the world to value women's football to the extent that it values men's football.

With this in mind, the PFA is articulating a claim for equal World Cup pay and conditions for men and women. The plan encompasses four critical areas: legal, organizing, negotiating, and communication.

The PFA believes that it not only has a responsibility to its members, but as a global footballing citizen, a broader responsibility to grow and develop women's football for the future and the opportunity to make football the preeminent sport worldwide not only for men and boys but also women and girls.



Creating a Model for the Future: Equality for International Women Footballers

In November 2019, the governing body of football in Australia, Football Federation Australia (FFA), and the representative body of Australian National Team players, Professional Footballers Australia (PFA), finalised an “historic Collective Bargaining Agreement that will give the Matildas a chance to earn the same as their male counterparts”.⁵

It was a first in Australian football, where historically the nation’s men’s team, the Socceroos, has earned significantly more than the nation’s women’s team, the Matildas. Moreover, it was globally novel. While there had been adjustments to men’s and women’s remuneration to project equality elsewhere in the world – no deal had developed an architecture capable of moving beyond the mere reallocation of payments from one cohort to another.

In developing a model that reconstructed the framework for remuneration of male and female athletes, the PFA and the FFA looked to the advocacy of Ruth Bader Ginsburg and the Swedish concept of Jämställdhet.
“Jämställdhet”

In the 1970s, Sweden developed the ideology of Jämställdhet to capture its discussion around gender discrimination. Rather than preaching in binary absolutes, it spoke to nuance, with a principal goal of ensuring that women’s equality wasn’t ring-fenced to only rights but extended to duties, to possibilities and to the sharing of power and responsibility.

This ideology would thread its way into the legal architecture of the English-speaking courts through Ruth Bader Ginsburg, the iconoclastic Justice of the Supreme Court of the United States.

In the early 1960s, Ginsburg was an impeccably credentialled law graduate⁶ unable to secure work within the legal establishment of the US due to a combination of her gender (female), religion (Jewish) and parental status (mother). Left without work, Ginsburg accepted an invitation to move to Sweden to co-author research into the comparative law. To do so, she only had to learn Swedish, which she promptly did and was ultimately awarded an honorary degree from Lund University for her contribution to the study of Swedish law.

Fundamental to her thinking was the emergence of social science from within Scandinavia – that culturally constructed roles imposed constraints on both sexes, roles that penalised all individuals and impoverished society.

First as a faultless advocate, and now as a revered justice, Ginsburg, as much as anybody, has shaped the arc and approach of the US, and in turn the Western world, to gender discrimination.

During her first appearance as an advocate at the Supreme Court in the 1973 case of *Frontiero v Richardson*,⁷ Ginsburg concluded her address with a famous 19th century quote: “I ask no favour of my sex. All I ask of our brethren is that they take their feet off our necks”.⁸

As gender stereotypes shifted in the US in the early part of the 1970s, the Supreme Court – justices and advocates alike – needed to wrestle with balancing competing considerations in determining the nature of women’s rights. Ginsburg had found her anchor – that stereotypes damage all, but the seismic cultural shifts through the US ensured that developing a linear solution to social change was near impossible.

⁵ Bossi, Dominic, “Equal Pay in Historic Deal”, *The Age*, 6 November 2019.

⁶ RBG was originally admitted to Harvard Law School as one of three women in her class. Her husband, Marty, was also enrolled at Harvard Law School. When he graduated a year ahead of RBG and took on a role at a New York law firm, RBG followed him to NYC and finally graduated from Columbia Law School. Decades later, she would be awarded an Honorary Doctorate from Harvard Law School.

⁷ 411 U.S. 677 (1973).

⁸ Sarah Grimke, letter dated 17 July 1837.

Over the course of a decade, jurisprudence would ebb and flow based on the quality of advocacy and, increasingly, the Court's political bent.

For many years, the Supreme Court would seek to distinguish between benign discrimination – action targeted for limited duration to a specific group to compensate for specific past advantages and ameliorate injustice – and paternalistic discrimination based on old stereotypes that perpetuated inequality.

Further, in such instances where the courts sought to impose equality in areas where there had been discrimination, justices needed to grapple with the question as to whether the benefits be extended to all classes or be taken away from those classes benefitting from them.

For example, where widows were granted benefits and widowers not, was equity served by taking

the benefit away from the widows or by extending it to widowers. Where extension of the benefit to widowers is deemed to be equitable – as opposed to the abolition of those benefits – are we then required to weigh the public costs – the burden – attached to this remedial action in reaching this view.

Beyond this, the Supreme Court would be forced to consider whether there were any public policy objectives that warrant classification by gender and, moreover, what degree are men and women generally fungible.

These are considerations that the courts would continually be required to revisit. Even a cursory analysis of the jurisprudence demonstrates the shape-shifting nature of court opinion and unpredictability of outcome.

Professional (team) sport and “progressive equality”

In the face of shifting social expectations, professional (team) sports are now approaching a similar juncture to the US Supreme Court in the 1970s and will be required to weigh the same competing considerations.

To what degree is preferential or benign investment in women's sport now required to overcome a legacy of discrimination? Do we extend the standards of benefits offered to the new cohort of beneficiaries or do we regress each to the lowest denominator? If we extend benefits, how do we manage as a matter of policy the burden of the increased fixed costs to the sport's stakeholders? More broadly, is there an inherent difference in some or all aspects of men's and women's sport that will inevitably require different treatment?

In some respects, it is helpful to know that the paradigm shift facing sport is not novel. The principles established through years of jurisprudence need not change in their application to sport, but merely to be reapplied to a new context.

In 2015, the Matildas refused to travel to the US to play an international friendly after failure to reach an agreement in relation to their collective bargaining agreement. Since that time, the rise of women's professional sport has been exponential.

In Australia, professional elite programs have (with significant success) been established in the Australian Rules Football (AFLW), cricket, Rugby Union and Rugby League.⁹ Within Europe, the investment of football's leading leagues and clubs is accelerating, with the continent's most powerful brands coupling their men's and women's teams in ways that as recently as a decade ago would have been unthinkable.¹⁰ FIFA, too has come under incredible scrutiny for continuing to have such disparity between the prize money offered for the Men's and Women's World Cup¹¹ and its historic underinvestment in the commercial assets of women's football.

The US national women's team issued proceedings against the United States Soccer Federation in the US District Court Central District of California seeking “collective action” for “violations of the Equal Pay Act” and “Class Action for Violations of the Title VII of the Civil Rights Act of 1964”.¹²

Within this context, the principles that guided the PFA's approach to the Collective Bargaining Agreement for the Socceroos and the Matildas (National Team CBA) were those inherent in Jämställdhet. Equal rights were an incomplete picture. As important as equal rights, were equal duties, equal possibilities and the foundation for equal contribution.

9 John Didulica, “Changing the game: the legal framework for the laws of the game, management of human performance data and related safety considerations in women's professional sport”, *International Sports Law Journal*, 2016.

10 www.uefa.com/insideuefa/about-uefa/news/newsid=2605007.html.

11 www.bbc.com/news/world-48530498.

12 Case 2:19-cv-01717.

In our mind, Jämställdhet was progressive equality, as to be differentiated from regressive equality.

Regressive equality would have been to reduce the model of managing the Socceroos to the level previously endured by the Matildas or find some middle ground where each team “kept a foot on the throat of the other”. As Ginsburg had previously argued, to adopt such an approach would be to impoverish both genders. Equality that doesn’t enrich both genders is illusory.

Instead, we chose to devise a model of progressive equality that could achieve the combination of mutually enhanced rights, shared responsibilities and upside possibility that Jämställdhet spoke to, while balancing those policy considerations that were fundamental to the Supreme Court’s deliberations on gender discrimination such as the financial burden of equality not shifting disproportionately to the public.

Australian National Team

Fundamentally, we believe the framework built to deliver progressive equality, as characterised by Jämställdhet, was achieved through the National Team CBA.

Conceptually, it was achieved by tying two key threads together – the interdependent components of the deal (remuneration, performance and commercial) and overlaying them with core values (partnership, equality and investment).

In practice, these interdependent components were the Remuneration Model (how money was generated and distributed), the Performance Model (the high-performance platform the players had access to) and the Commercial Model (what value and parameters were proscribed to the use of the player’s intellectual property).

The Remuneration Model is characterised at each point by a notion of fairness. First, the pool from which the players are remunerated is created by aggregating those commercial assets exploited by FFA which are contingent on the personal exertion of the players or the use of their collective intellectual property. Second, the share allocated to the players is governed by an equitable revenue share arrangement which ensures the remuneration made available to the players can never be a burden carried by the broader sport, but instead there remains enough revenue to fuel the game. Third, an arrangement where a portion of the revenue nominally allocated to the players is



reinvested into development programs for talented young players ensuring that policy considerations relating to investment in area of important policy (such as youth football) are still met. Fourth, an equal distribution of these revenues between the Socceroos and the Matildas satisfies not only the principle of equality between the genders but aspires to the broader objective of the possibilities that exist to build the value in the commercial properties of each team.

The Performance Model ensures that identical resources – in terms of logistics and support personnel – are made available to each team and players have access to the same opportunity for development and excellence; the factors which drive the professional growth and intrinsic experience of players. As previously outlined, such a performance model is designed to expand the benefits afforded to the Matildas rather than regress those offered the Socceroos, much as Ginsburg argued successfully in the Supreme Court in *Frontiero*. The Socceroos have spent a generation defining what characterises a high-performance sporting environment, so to depart from their standards to accommodate increased investment in the Matildas did not achieve *Jämställdhet*. Only elevating the overall program of the Matildas would do this. The next phase of developing the suitability of the Performance Model is to assess it in the context of fungibility. To achieve progressive equality, an analysis is required on the suitability of the existing model for the training and development of footballers, given female athletes have inherent physiological and psychological differences to men, yet the existing model has been designed for men based on the male experience.

The Commercial Model was characterised by collective and personal equality. As previously outlined, all commercial assets driven by the intellectual property of the player collective (such as broadcast rights, commercial sponsorships, licencing) and all personal exertion of the teams (match attendances, personal commercial appearances) were aggregated into one pool that was equally divisible across both teams. In parallel, the rights granted and obligations imposed on each player and each cohort as a part of the National Team CBA are precisely the same (such as the number of player appearances, manner in which the image can be used, covenants relating to commercial competitors) as well as the mixed use of players within corporate partnerships.

Similarly, the values we chose to anchor the negotiations in were fundamental to achieving and shaping our desired outcomes.

Partnership, as we saw it, was recognising that sport – at almost every turn – is an indivisible ecosystem, with each component interdependently playing its part in growing the game's sustainability, popularity and revenue base. In the absence of partnership – between the players and the game and between the Socceroos and the Matildas – the possibilities central to both *Jämställdhet* and to Australian football could not be achieved.

Equality was critical for three reasons. First, we formed the view that it is fundamental to sport's social licence to operate.¹³ In this context, a governing body is given a monopoly power to exploit the sport in Australia and so its social license must be scrutinised closely to ensure it is achieving not only its sporting and economic

¹³ A social licence to operate (SLO) refers to the level of acceptance or approval by local communities and stakeholders of organisations and their operations. The concept has evolved fairly recently from the broader and more established notions of “corporate social responsibility” and “social acceptability”. It is based on the idea that institutions and companies need not only regulatory permission but also “social permission” to conduct their business. It is an outcome from the ways that our companies and institutions manage themselves (ethics, labour practices, sustainability, etc.) in their wider environment, and their risk communication and engagement activities with their stakeholders.



objectives, but discharging its social obligations to Australians – which now clearly involves appropriately valuing the role of women in sport. Second, there is a benevolent self-interest in taking ownership of this responsibility and leading. Its an example of dynamic leadership that will resonate and align with like-minded fans, corporations and institutions. Third, extending equality to the Matildas ensured their performance standards would increase, an enhanced platform could be built for their ongoing success and such success

could kick-start a virtuous cycle for the entire sport. Investment was the final value and it remains fundamental to progress. Investment manifested in a number of interdependent ways within the deal – the players re-investing collectively into the game's talent youth through allocating a portion of their revenue to emerging teams, the sport generally and our national teams to ensure globally acceptable high-performance standards and the Socceroos seeing the value of investing into the Matildas – a benevolent self-interest of sorts.

Next steps - Universal application

The current context of world football, in our view, gives the sport an opportunity, in many parts of the world, to immediately embed progressive equality throughout international football.

For most international male footballers, their international commitments are their secondary form of engagement. For most women, it has historically been their primary source.¹⁴

Within the Australian model, we have recognised this dynamic. Accordingly, while the quantum payable to the teams and the leading players is the same regardless of gender, their dividends are allocated in such a way to ensure that contextual equity is reached. The men will receive match payments supplemented by a commercial dividend while the women will be remunerated by virtue of a fixed term contract (incorporating both personal exertion and commercial payments), a contract that will effectively act as the anchor to their livelihood as a footballer. It would, of course, be unconscionable to insist on the same model of remuneration for men and women for national team participation as it would disproportionately expose women footballers to the vicissitudes of sport – such as injury – and compromise their career choices through a lack of economic security (which, by virtue of their universal capacity to procure fixed term club based employment, they are not acutely exposed to).

This model need not result in male players regressing, which would be an aversion to the model of progressive equality espoused. Instead, if equitable revenue share models are developed across the world, male players would no longer

be remunerated arbitrarily when playing for their nation, but remunerated to a value commensurate to balancing the revenues they generate for the sport (through personal exertion and intellectual property) with the inherent requirement for the sport to ensure it fulfils its social license to operate.

To take this step, transparency and trust would need to be built between players and federations, while a spirit of genuine partnership would need to be created through collective bargaining.¹⁵

Without good faith collective bargaining to anchor the negotiations, achieving this model of progressive equality would have been impossible. An opportunity to work side by side with FFA to deliberate on accurate financials, identify and align around the industry's strategic priorities and leverage the influence of established players for the benefit of emerging players ensured the development of incremental and compounding gains over the course of the CBA for FFA, for the Socceroos, for the Matildas, but most importantly for the entire ecosystem. Such a model remains portable and relevant for any industry where there is an acute under-representation of a specific demographic, be it based on gender, culture or age.

In some respects, the path to progressive equality in sport, and across each of those industries that are weaker for a lack of diversity, has the same starting principle as the Supreme Court of the United States when it first ruled in favour of Ginsburg – management taking their foot off the collective necks of workers.

¹⁴ FIFPro Men's Global Employment Report 2016 and FIFPro Women's Global Employment Report 2017.

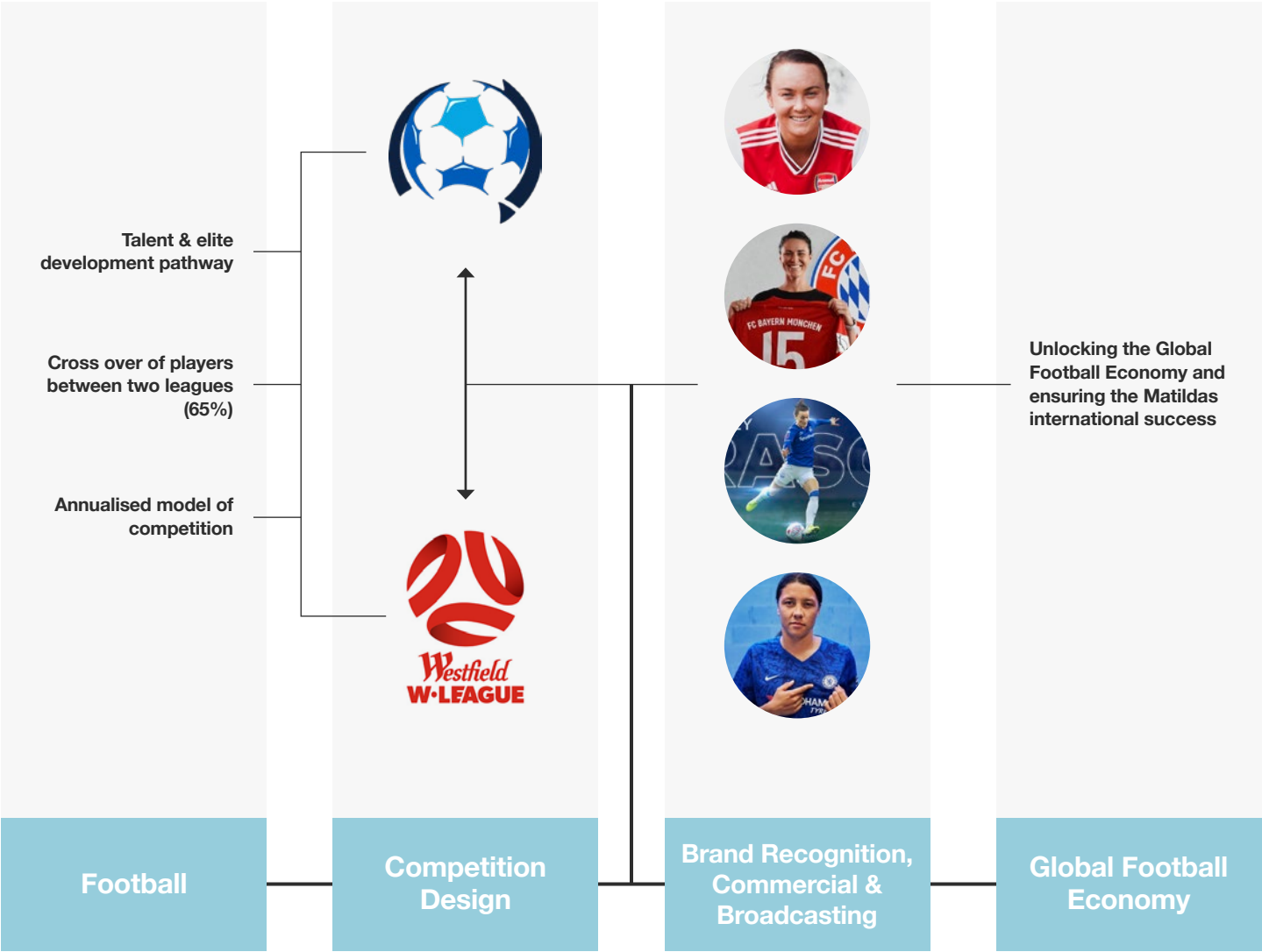
¹⁵ Protected and promoted by FIFA Statutes (at Article 3) given that Article 23 of the Universal Declaration of Human Rights identifies the ability to organise trade unions as a fundamental human right.

A Model of Partnership Case Study

NWSL, W-League, US Soccer & FFA must build a partnership to thrive against increasing global competition



Professional Clubs & NPLW Clubs must build a partnership to develop talent to catapult our best and brightest into Global Clubs



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Intelligence
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Respect



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