

Chapter 4

Conclusions

4.1 The impetus for this inquiry grew out of concerns expressed by members of the rugby community about the future of rugby union under the stewardship of the Australian Rugby Union (ARU). The committee considers that some of the evidence it has received through this inquiry raises questions regarding the governance of the ARU and its stewardship of rugby union in Australia.

Deliberations in removing a Super Rugby team

4.2 As discussed in Chapter 2, the ARU advanced two main arguments for removing a Super Rugby team. The first argument related to the solvency of the ARU. According to the ARU, continuing to support five Super Rugby teams would lead to the ARU becoming insolvent by the third quarter of 2019.

4.3 The ARU's second argument was that reducing the number of teams would arrest the decline in the performance of Australian Super Rugby teams by fostering more competition for Super Rugby places.

4.4 The committee understands that removing a Super Rugby team will provide the ARU with short term financial relief. However, ending the Western Force will not reverse the long term structural decline in the game's finances.

4.5 The ARU acknowledges that all of Australia's remaining Super Rugby teams have experienced financial difficulty. Even with the removal of the Western Force, the ARU does not have the capacity to continue to be the lender of last resort to four Super Rugby teams indefinitely. The committee also understands and accepts that moving to four Australian Super Rugby teams may provide greater competition for playing spots in Super Rugby. However, the decision to remove a Super Rugby team necessarily comes at the expense of developing greater home grown talent and maintaining a national rugby footprint.

4.6 The committee understands that rugby union needs to be sustainable over the longer term and that may, unfortunately, require the ARU to consider seriously its future in South Africa, New Zealand, Australia and Argentinian Rugby Union (SANZAAR).

4.7 While the decision of which team to remove was entirely a decision for the ARU, the committee accepts that it was not one that could be made in a vacuum. Undoubtedly, having to negotiate to acquire the Melbourne Rebels' licence was a complicating factor. However, the committee considers that the way the ARU went about making the decision exacerbated the existing tensions between the ARU, member unions and rugby's grassroots supporters.

4.8 The ARU was aware that removal from the competition would have a significant financial and emotional toll on the respective team's players, staff and fans. The committee considers that the seriousness of the decision led the rugby community

to hold a reasonable expectation that the ARU would only make the decision to remove a team after conducting a transparent and robust process. The ARU seemed to be aware of this expectation: the ARU said it would consult, be transparent and open minded. The committee considers that the ARU could have made a more concerted effort to consult more broadly and to be transparent with stakeholders regarding its thinking.

4.9 Instead, the ARU's approach to engaging with key stakeholders during the review period suggested that the decision was a foregone conclusion and had effectively been made earlier than the date of the ARU's final announcement, even preceding the commencement of the due diligence and analysis process.

4.10 The ARU appears to have considered the possibility of removing a team from the competition as early as August 2016 and it seems likely that the option to remove an Australian Super Rugby team was being actively considered by ARU management at the same time that the Alliance Agreement was being negotiated with the Western Force. The committee concludes that, whilst no decision had formally been taken by the ARU Board, ARU management may have been endeavouring to keep its future options to remove an Australian Super Rugby team open while negotiating the Alliance Agreement in 2016. The committee considers that, if that was the case, the failure to reveal that possibility reflects poorly on the ARU.

4.11 In terms of a final decision, the committee considers that the decision to remove the Western Force was effectively made on 9 April 2017. At that meeting, the ARU Board had the Super Rugby scorecard and the metrics necessary to make the decision and the evidence from Western Australia Rugby Union Inc (RugbyWA) suggested that by the time of the 10 April meeting with Mr Day and Mr Clarke the ARU was predisposed to favour retaining the Melbourne Rebels.

4.12 From this point on, whether because of the legal action initiated by RugbyWA or for other reasons, the ARU seems to have been resistant to reinstating the Western Force, despite the best endeavours of Mr Andrew Forrest and the Western Australian Government.

4.13 The committee considers that the ARU showed little regard for player welfare. Minister Murray and representatives of RUPA both expressed concern about the effect that the decision would have had on the players' mental health. To ensure that players in similar circumstances are better provided for, the committee is of the view that greater oversight and consideration from both the Australian Sports Commission and National Sporting Organisations for player welfare is essential.

4.14 The Australian Sports Commission operates under the *Australian Sports Commission Act 1989* and is tasked with increasing sports participation and excellence. The Commission's roles include delivering sports programs in line with the policy agenda of the Commonwealth Government, providing funding to national sporting organisations, and ensuring Australians sports people excel on the world stage.

Recommendation 1

4.15 The committee recommends that the Australian Sports Commission consider an additional principle to be introduced in the Commission's Sports Governance Principles in relation to National Sporting Organisations' commitment and duty to player welfare.

4.16 The effect of the decision to remove the Western Force will have a serious impact on rugby union in Western Australia. It has already reduced the game's national footprint and ended a professional pathway for younger players in Western Australia.

4.17 Submitters raised concerns with the committee that the Western Force brand is used for a number of other rugby teams around Western Australia. To ensure that these teams can continue to use the Western Force brand, the committee considers that the intellectual property acquired in the Alliance Agreement ought to be transferred back to RugbyWA.

Recommendation 2

4.18 The committee recommends that Australian Rugby Union immediately transfer all intellectual property and trademarks associated with the Western Force to RugbyWA.

4.19 The committee received evidence from Minister Murray that the Western Australian Government had sought legal advice on what remedies may be available to the government based on the commitments provided to it by the ARU.

Recommendation 3

4.20 The committee recommends that the Western Australian Government:

- **review evidence to the committee in relation to the process used to eliminate Western Force from the national Super Rugby competition; and**
- **seek further legal advice on what assurances were provided to them by Australian Rugby Union and in particular the Australian Rugby Union negotiations with both the Victorian and Western Australian Governments which informed the good faith investment decisions by the Western Australian Government on behalf of Western Australian taxpayers.**

4.21 The committee understands Western Force fans' disappointment at this decision and the way it was made.

ARU's stewardship

4.22 The committee understands the concerns of submitters who felt that the ARU ignored warnings not to support expanding the Super Rugby competition to 18 teams. RUPA's prediction that an 18 team competition spread across multiple time zones would be financially deleterious was correct.

4.23 The committee considers that SANZAAR's decision to expand the Super Rugby competition to 18 teams exacerbated the financial strain on the ARU because it led to a downturn in the revenue generated by Australian Super Rugby teams.

4.24 The committee considers the ARU Board's decision to support the expansion to 18 teams was unwise and it urges the ARU Board to consult more widely with stakeholders, including the Australian Rugby Strategy Group, in making future decisions about Super Rugby.

4.25 Chapter 3 also highlighted the poor process by which the ARU sold the Melbourne Rebels to Imperium Sports Management Pty Ltd (Imperium) in 2015.

4.26 The committee was very concerned by the seemingly generous terms the ARU negotiated to transfer the licence. The committee cannot understand the basis on which substantial additional funding was provided and why no conditions were placed on the use of the funds.

4.27 The committee considers that the Melbourne Rebels' deal provided virtually no benefit to the ARU and disadvantaged the other members of the ARU who could not benefit from the additional funding that was provided to the Melbourne Rebels.

4.28 The committee was concerned by the evidence it received and considers that the Australian Securities and Investments Commission may wish to examine these transactions.

Recommendation 4

4.29 The committee recommends that the Australian Securities and Investments Commission review the evidence received by the committee regarding transactions involving the Melbourne Rebels.

Recommendation 5

4.30 The committee recommends the Australian Securities and Investments Commission review the financial circumstances reported in the Australian Rugby Union's annual reports against the evidence presented to the committee.

4.31 The members who are most substantially affected by the diversion of funds to Super Rugby are the game's amateur clubs.

4.32 The committee received evidence that, particularly in New South Wales, the reduction in funds flowing to lower levels of the game is affecting player numbers and development opportunities for players.

4.33 The committee understands the concerns of grassroots stakeholders in Western Australia who are concerned that the removal of the Western Force will diminish the significant growth in player numbers in Western Australia that occurred under the Western Force. The committee also received evidence that the removal of the Western Force may lead young rugby players to abandon the sport altogether because there is no professional future for them in their home state.

4.34 The committee understands and shares the deep disappointment of the submitters and Western Force fans who consider that their team was unfairly removed

from the competition. The committee laments the team's demise but accepts that little can be done now the licence has been surrendered.

4.35 Looking to the future, the committee received evidence from grassroots stakeholders that the composition of the ARU Board was one area that may be able to be improved. They noted that whilst a skills based board may be appropriate, the historical factors mean that the ARU Board has little regional diversity and few participants from community rugby.

4.36 The committee considers that this is an issue that the ARU may wish to address going forward.

Recommendation 6

4.37 The committee recommends the Australian Rugby Union consider implementing measures outside of state based bodies which ensure the involvement and engagement with grassroots rugby union supporters, particularly in relation to consultation in decision making processes that concern significant change to the nature and future direction of the sport.

Recommendation 7

4.38 The committee recommends that the Commonwealth Government examine the structure of sporting organisations in Australia with a view to maximising community involvement, and increasing the accountability and transparency of organisations that bear the custodianship of a sport.

Recommendation 8

4.39 The committee recommends that the Commonwealth Government undertake a review of world's best practice sporting policies in relation to sports funding and performance measures.

Concluding comments

4.40 There is little doubt that the structural decline in the game's finances will continue to challenge the ARU and Super Rugby going forward. The committee accepts that external factors have played a significant role in shaping the challenging environment in which Super Rugby now finds itself, but considers that a number of the decisions taken by the ARU have made those factors more acute.

4.41 Those factors include the decision to support SANZAAR's expansion of the Super Rugby competition to 18 teams, against the will of major Australian rugby stakeholders and the decision to provide significant additional financial support to the Melbourne Rebels. The committee acknowledges that the ARU Board is trying to improve the financial and on field performance of Australian rugby and is aware that there might be difficult times ahead.

Senator Rachel Siewert

Chair