

The Senate

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Community Affairs  
References Committee

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Future of rugby union in Australia

November 2017

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# MEMBERSHIP OF THE COMMITTEE

## 45<sup>th</sup> Parliament

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# ABBREVIATIONS

ARU	Australian Rugby Union
Corporations Act	<i>Corporations Act 2001 (Cth)</i>
Imperium	Imperium Sports Management Pty Ltd
RugbyWA	Western Australia Rugby Union Inc
RUPA	Rugby Union Players' Association
SANZAAR	South Africa, New Zealand, Australia and Argentinian Rugby Union



# **LIST OF RECOMMENDATIONS**

## **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.**

## **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.**

## **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.**

## **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.**

### **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.**

# Chapter 1

## Background to the inquiry

### Introduction

1.1 On 11 August 2017, the Board of Australian Rugby Union (ARU) announced that it would discontinue the Super Rugby licence for the Western Force.<sup>1</sup> The decision prompted outrage among rugby union fans who believed that the process the ARU used to arrive at that decision was flawed.<sup>2</sup>

1.2 Eliminating one Australian team from the international competition also saw broader concerns raised around the governance and financial sustainability of rugby union in Australia and the ARU as custodians of the game.

### *Committee's interest in the inquiry*

1.3 On 6 September 2017 the Senate referred the future of rugby union in Australia to the Senate Community Affairs References Committee for inquiry and report by 13 November 2017 with the following terms of reference:

The future of rugby union in Australia, with particular reference to:

- a) the Australian Rugby Union Board deliberation leading up to the decision to reduce Australian rugby teams from five to four in the national competition;
- b) whether there continues to be a truly national rugby union footprint in Australia;
- c) the role of national and state-based bodies in encouraging greater national participation in rugby union;
- d) the corporate governance arrangements and composition of national and state-based rugby union bodies, including community representation on those bodies;
- e) the impact of the decision to reduce the number of Australian teams on national participation in rugby union; and
- f) any other related matters.<sup>3</sup>

1.4 The committee received extensions to report until 15 November 2017.<sup>4</sup>

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1 Australian Rugby Union (ARU), 'ARU to discontinue Western Force Super Rugby licence', *Media release*, 11 August 2017, <http://aru.com.au/MediaReleases/Article/tabid/1699/ArticleID/18199/ARU-TO-DISCONTINUE-WESTERN-FORCE-SUPER-RUGBY-LICENCE.aspx> (accessed 21 September 2017).

2 Mr William Pulver, Chief Executive Officer, ARU, *Committee Hansard*, 20 September 2017, p. 1; The Hon. Michael Murray, Minister for Sport and Recreation, Western Australian Parliament, *Committee Hansard*, 11 October 2017, p. 1; Name withheld, *Submission 4*, [p. 2]; Name withheld, *Submission 9*, [p. 2]; Mr Angus Tibbits, *Submission 11*, p. 1.

3 *Journals of the Senate*, No. 58, 6 September 2017, p. 1873.

1.5 When this inquiry was announced, and when Mr Cameron Clyne, Chairman of the ARU appeared before the committee, the ARU stated publicly that it 'questioned the merit' of the inquiry.<sup>5</sup>

1.6 The committee considers there are two main reasons for undertaking the inquiry. First, the inquiry offered an opportunity for members of rugby union clubs across Australia to place on record their concerns regarding the process the ARU worked through to arrive at the decision it did and their concerns about the ARU's stewardship of the game more broadly, particularly with a view to ensuring the game becomes sustainable into the future.

1.7 Second, the sport attracts more than \$1.8 million in federal funding each year.<sup>6</sup> Accordingly, ensuring appropriate governance arrangements support the expenditure of this funding is in the national interest.

### **Brief overview**

1.8 During this inquiry witnesses questioned:<sup>7</sup>

- the ARU's decision to agree to remove a professional rugby team and its impact on the sport;
- the process by which the ARU decided that the Western Force would be removed, including licence arrangements and the underlying analysis which supported the ARU's decisions;
- whether decisions made by the ARU exacerbated the financial challenges for the sport in Australia; and
- the impact of the decision on player welfare and confidence in professional Rugby Union in Australia.

1.9 The elite rugby union competition in the southern hemisphere is known as Super Rugby. Super Rugby is convened by a joint venture of the rugby union boards

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4 *Journals of the Senate*, No. 68, 13 November 2017, p. 2190; *Journals of the Senate*, No. 69, 14 November 2017, p. 2208.

5 Mr Cameron Clyne, Chairman, ARU, *Committee Hansard*, 16 October 2017, p. 1; ARU, *ARU Statement regarding Senate inquiry*, 7 September 2017, <http://www.aru.com.au/MediaReleases/Article/tabid/1699/ArticleID/18209/ARU-STATEMENT-REGARDING-SENATE-INQUIRY.aspx> (accessed 24 October 2017).

6 Australian Sports Commission, *Annual Report 2015-16*, p. 138 (\$1 889 090); Australian Sports Commission, *Annual Report 2014-15*, p. 190 (\$2 290 850); Australian Sports Commission, *Annual Report 2013-14*, p. 176 (\$2 665 113).

7 Mr Tony Howarth, Chairman, Western Australian Rugby Union (RugbyWA), *Committee Hansard*, 20 September 2017, p. 32; Mr Mark Sinderberry, Former Chief Executive Officer, RugbyWA, *Committee Hansard*, 20 September 2017, p. 34; Mr Ross Xenos, Chief Executive Officer, Rugby Union Players' Association (RUPA), *Committee Hansard*, 11 October 2017, p. 8; Mr John Welborn, *Committee Hansard*, 11 October 2017, p. 38; Dr David Masters, *Submission 3*, p. 2; Name withheld, *Submission 4*, pp. 3–4; Mr Gary Gleeson, *Submission 8*, p. 2; Name withheld, *Submission 12*, [pp. 1–2]; Name withheld, *Submission 15*, p. 11; Name withheld, *Submission 16*, [p. 1]; Name withheld, *Submission 17*, p. 3.

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of Australia, New Zealand, South Africa and Argentina known as SANZAAR. The competition includes teams from each of those countries and one from Japan.<sup>8</sup>

1.10 SANZAAR is responsible for determining the format of the competition and leads the discussion regarding television broadcast rights<sup>9</sup> The Chairman and the Chief Executive Officer of the ARU represent Australia on the SANZAAR Board.<sup>10</sup>

1.11 The ARU is the governing body for rugby union in Australia. The members of the ARU are the State and Territory Unions, Super Rugby licensees and the Rugby Union Players' Association (RUPA).<sup>11</sup> The business of the ARU is managed by a board of directors appointed by the members.<sup>12</sup>

1.12 The number of professional Australian rugby teams has varied over time. Before the Western Force joined the Super Rugby competition in 2006, there were only three professional Australian teams: Queensland Reds, New South Wales Waratahs and the ACT Brumbies.

1.13 A fifth Australian franchise, the Melbourne Rebels, joined the Super Rugby competition in 2011.<sup>13</sup>

1.14 In 2016, the Super Rugby competition expanded from 15 teams to 18 teams, including teams from Argentina and Japan and a fifth South African team.<sup>14</sup>

1.15 A new broadcast agreement was negotiated for the period 2016–2020 to cover the expanded competition.<sup>15</sup> The new broadcast agreement provided a substantial windfall to the SANZAAR joint venture partners, including Australia. The ARU informed the committee that it received \$285 million over the broadcast term.<sup>16</sup>

1.16 In 2017, after one season with the 18-team format, SANZAAR decided to revisit the decision to alter the competition format.<sup>17</sup> Altering the format of the Super Rugby competition during the term of the broadcast agreement required the agreement of all of the joint venture partners. This requirement meant that Australia possessed a veto power that it could have exercised in the SANZAAR process.<sup>18</sup> The ARU, as the Australian representatives, decided not to exercise that right.

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8 Mr Pulver, *Committee Hansard*, 20 September 2017, p. 2.

9 Mr Pulver, *Committee Hansard*, 20 September 2017, pp. 2, 7–8.

10 Mr Pulver, *Committee Hansard*, 20 September 2017, p. 8.

11 ARU Constitution, cl. 3.2(a).

12 ARU Constitution, cl. 5.

13 Mr Pulver, *Committee Hansard*, 20 September 2017, p. 16.

14 Mr Xenos, *Committee Hansard*, 11 October 2017, p. 8.

15 Mr Pulver, *Committee Hansard*, 20 September 2017, p. 10.

16 Mr Pulver, *Committee Hansard*, 20 September 2017, p. 10.

17 RUPA, *Submission 1*, [p. 3].

18 Mr Pulver, *Committee Hansard*, 20 September 2017, p. 9.

1.17 On 10 March 2017, the SANZAAR partners unanimously agreed to reduce the number of teams in the competition from 18 teams back to 15 teams.<sup>19</sup> As part of this agreement, the SANZAAR partners agreed that two South African and one Australian teams would be removed from the competition.

1.18 The decision on which Australian team would be removed was solely the decision of the ARU.<sup>20</sup>

1.19 Ultimately, the ARU decided that the Australian team to be removed would be the Western Force.

1.20 The next chapter of this report considers why the ARU decided not to veto the removal of an Australian Super Rugby team and how it decided which team would be removed.

1.21 Chapter 3 examines the corporate governance of the ARU and its stewardship of rugby union in Australia.

1.22 A final chapter contains the committee's conclusions and recommendations.

### **Conduct of the inquiry**

1.23 The committee advertised the inquiry on its website and wrote to relevant individuals and organisations inviting submissions by 12 October 2017. A list of submissions made to the inquiry can be found at Appendix 1.

1.24 The committee held three public hearings in connection with the inquiry:

- 20 September 2017—Perth;
- 11 October 2017—Perth; and
- 16 October 2017—Canberra.

1.25 A list of the witnesses who appeared at the hearings can be found at Appendix 2.

1.26 The committee thanks all those who contributed to the committee's inquiry.

### ***Note on references***

1.27 All references to Committee Hansard are to proof transcripts. Page numbers may vary between proof and official transcripts.

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19 Mr Pulver, *Committee Hansard*, 20 September 2017, p. 2.

20 Mr Pulver, *Committee Hansard*, 20 September 2017, p. 9.

## Chapter 2

### The ARU's decision making

2.1 This chapter considers three questions:

- why remove an Australian Super Rugby team?
- what process did the Australian Rugby Union (ARU) use to identify which team would be removed?
- when did the ARU decide to remove the Western Force?

#### Why remove an Australian Super Rugby team?

2.2 As mentioned in Chapter 1, the ARU had the ability, during the term of the broadcast agreement, to veto a change to the Super Rugby format that would ultimately result in the loss of an Australian Super Rugby team.<sup>1</sup>

2.3 The ARU advised the committee that two key factors contributed to the ARU's decision to support the removal of one Australian Super Rugby team: the solvency of the ARU and the consolidation of high-performance talent.<sup>2</sup>

#### *Solvency*

2.4 According to the ARU, the game of rugby has been struggling to support itself financially for some time and that Super Rugby often runs at a loss, saying:

The Australian Rugby Union has a history of running as a loss-making enterprise, surviving on one-off windfalls from hosting major tournaments like the Rugby World Cup and from marquee tours like the recent Lions visit. While the Wallabies run at a healthy profit each year, the fact is that Super Rugby is the most financially challenged part of the ARU's operations, and the declining revenue trends in Super Rugby are accelerating.<sup>3</sup>

2.5 One of the major sources of income for the ARU is broadcast revenue. The ARU explained to the committee that the broadcast discussions are led by South African, New Zealand, Australian and Argentinian Rugby (SANZAAR) and the revenue is divided between the partners to run rugby union in their respective countries.<sup>4</sup> As noted in Chapter 1, under the 2016–2020 broadcast deal, the ARU received \$285 million.<sup>5</sup>

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1 Mr William Pulver, Chief Executive Officer, Australian Rugby Union (ARU), *Committee Hansard*, 20 September 2017, p. 9.

2 Mr Cameron Clyne, Chairman, ARU, *Committee Hansard*, 16 October 2017, pp. 11, 12.

3 Mr Pulver, *Committee Hansard*, 20 September 2017, p. 2.

4 Mr Pulver, *Committee Hansard*, 20 September 2017, pp. 9–10.

5 Mr Pulver, *Committee Hansard*, 20 September 2017, p. 10.

2.6 From this amount, the ARU provides approximately \$6 million to each Super Rugby team and \$10 million to build community participation.<sup>6</sup> Over the last five years, the ARU also put \$28 million of unbudgeted funding into these Super Rugby clubs, over half of which was to the Melbourne Rebels.<sup>7</sup>

2.7 The ARU believed the drain on its finances meant that if its financial situation did not improve, it would struggle to remain solvent beyond the third financial quarter of 2019, saying:

Financial modelling, undertaken around the retention of five Australian teams through 2020, forecast the ARU as being unable to meet its liabilities by Q3 of 2019, with an estimated financial hole of between \$13 million and \$26 million by Q4 of 2020.<sup>8</sup>

2.8 The graph below, published by the ARU, shows its cashflow analysis based on a best and worst case financial scenario if the ARU decided to maintain five Super Rugby teams.

Graph 2.1—ARU financial forecast 2017–2020 with five Super Rugby teams



	2017 Q3	2017 Q4	2018 Q1	2018 Q2	2018 Q3	2018 Q4	2019 Q1	2019 Q2	2019 Q3	2019 Q4	2020 Q1	2020 Q2	2020 Q3	2020 Q4
Cash - keep 5 teams (best)	7,415	9,194	14,043	12,085	8,719	2,186	4,995	7,088	(235)	(2,090)	828	(2,227)	(3,847)	(13,604)
Cash - keep 5 teams (worst)	7,415	9,194	14,043	12,085	8,719	2,186	3,495	4,088	(4,735)	(8,090)	(6,672)	(11,227)	(14,347)	(25,604)

Source: ARU, *Supporting Documentation*, [p. 3].<sup>9</sup>

2.9 The ARU's management team believed that it needed to take some action to remediate this financial situation:

Doing nothing was not an option. Commissioning another review was not an option... Meaningful change was required.<sup>10</sup>

[...]

6 Mr Pulver, *Committee Hansard*, 20 September 2017, pp. 13–14.

7 Mr Pulver, *Committee Hansard*, 20 September 2017, pp. 14, 20.

8 Mr Pulver, *Committee Hansard*, 20 September 2017, p. 3.

9 ARU, *Supporting Documentation*, [p. 3], <http://www.rugbyaustralia.com.au/portals/1/SUPPORTING-DOCUMENTATION-THE-FUTURE-OF-SUPER-RUGBY.pdf> (accessed 8 November 2017) (*Supporting Documentation*).

10 Mr Pulver, *Committee Hansard*, 20 September 2017, p. 2.

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The reduction of a Super Rugby team provides a saving of \$18 million over the period of 2018 to 2020, and this will enable the ARU to continue trading and to invest in community rugby, player and coach development and our all-important women's programs.<sup>11</sup>

2.10 However, some submitters to this inquiry were sceptical that solvency was the reason for ARU's agreement to remove an Australian Super Rugby team.

2.11 The committee received evidence from submitters that the ARU had structural financial problems that would not be remediated by the removal of a Super Rugby team:

To suggest that the ARU will have burnt through \$285 Million dollars between 2016 and 2019, whilst simultaneously pointing towards \$28 Million [in] unbudgeted expenditure as the catalyst...then to indicate that the \$18 Million that would be recouped through dismissing a team will be sufficient to balance the budget is lunacy.<sup>12</sup>

2.12 Other submitters raised concerns that the ARU's financial difficulties were the result of decisions made by the ARU's management.

In my opinion, the decline in performance and finance is likely to be attributable to the way in which the ARU Board has managed both the super rugby games and its finances...the decline since 2015 stems from running our super rugby teams ragged by extensive travel over multiple time zones, depriving the fans of being able to follow their teams on TV at reasonable hours...<sup>13</sup>

2.13 The committee heard that investing in future players was important because Australian rugby union's economic woes stem, in part, from the poor performance of Australia's professional rugby teams.<sup>14</sup>

### ***Team performance***

2.14 It is well recognised that the performance of sporting teams affects their financial viability.<sup>15</sup>

2.15 The ARU told the committee that the game's finances have declined as the Super Rugby competition expanded:

The financial problems emanating from Super Rugby are commensurate with sustained declines in the performance of our Australian Super Rugby teams since the competition first expanded from Super 12 back in 2006.

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11 Mr Pulver, *Committee Hansard*, 20 September 2017, p. 3.

12 Name withheld, *Submission 16*, [p. 6].

13 Mr Angus Tibbits, *Submission 11*, p. 5.

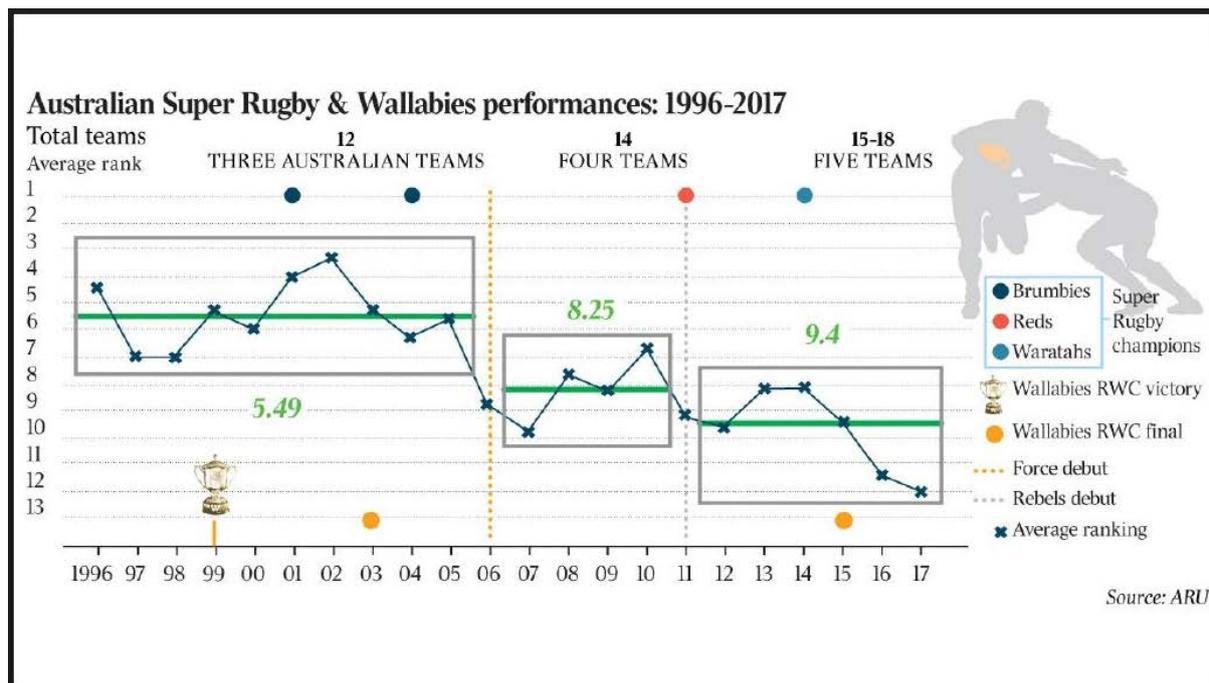
14 Mr Clyne, *Committee Hansard*, 16 October 2017, p. 11.

15 Mr Pulver, *Committee Hansard*, 20 September 2017, p. 2; Mr Mark Sinderberry, Former Chief Executive Officer, Western Australia Rugby Union Inc (RugbyWA), *Committee Hansard*, 20 September 2017, p. 32; Mr Peter Leahy, *Committee Hansard*, 11 October 2017, p. 42; Mr Clyne, *Committee Hansard*, 16 October 2017, p. 12.

From 2006 to 2017 the win rate of Australian Super Rugby teams dipped from almost 55 per cent to just above 41 per cent. Since May last year Australian Super Rugby teams have lost 31 consecutive matches against New Zealand Super Rugby teams. We have not won a Bledisloe Cup since 2002.<sup>16</sup>

2.16 A visual representation of the decline in performance in Australian Super Rugby teams was included in an article in *The Weekend Australian* based upon data from the ARU.<sup>17</sup>

Graph 2.2—Super rugby team performance 1996–2017



Source: Richard Gluyas, 'Shifting goalposts: Clyne packs down to save rugby from AFL raiders', *The Weekend Australian*, 15 April 2017, p. 23.

2.17 According to the ARU, Australia did not have the depth of talent to support five Super Rugby sides and that had an effect on the game's finances:

...the expansion from three to four to five saw a step-down in performance from 60 per cent of wins to 50 to 40. It's quite clear that Australia doesn't have the playing depth to support five teams and that fans simply don't turn up to watch teams that aren't performing, and that just exacerbates the financial competition.<sup>18</sup>

16 Mr Pulver, *Committee Hansard*, 20 September 2017, p. 2.

17 Richard Gluyas, 'Shifting goalposts: Clyne packs down to save rugby from AFL raiders', *The Weekend Australian*, 15 April 2017, p. 23. See also: Dr David Masters, *Submission 3*, p. 7. The graph was first demonstrated at an ARU press conference on 10 April 2017: Mr Andrew Luscombe, *Submission 7*, [p. 6].

18 Mr Clyne, *Committee Hansard*, 16 October 2017, p. 3.

2.18 Therefore, the ARU submitted that a move to four Australian Super Rugby teams would lead to a greater concentration of Australian rugby talent:

One thing it will do is create greater competition for spots. One of the reasons we don't have, I think, quite the level of depth to support five teams is we've got approximately 20 players in Super Rugby who are not eligible for the Wallabies. So we are actually having to draw players who are not eligible to play for Australia. That is not ideal. You want a situation where everyone is playing in Super Rugby competition.<sup>19</sup>

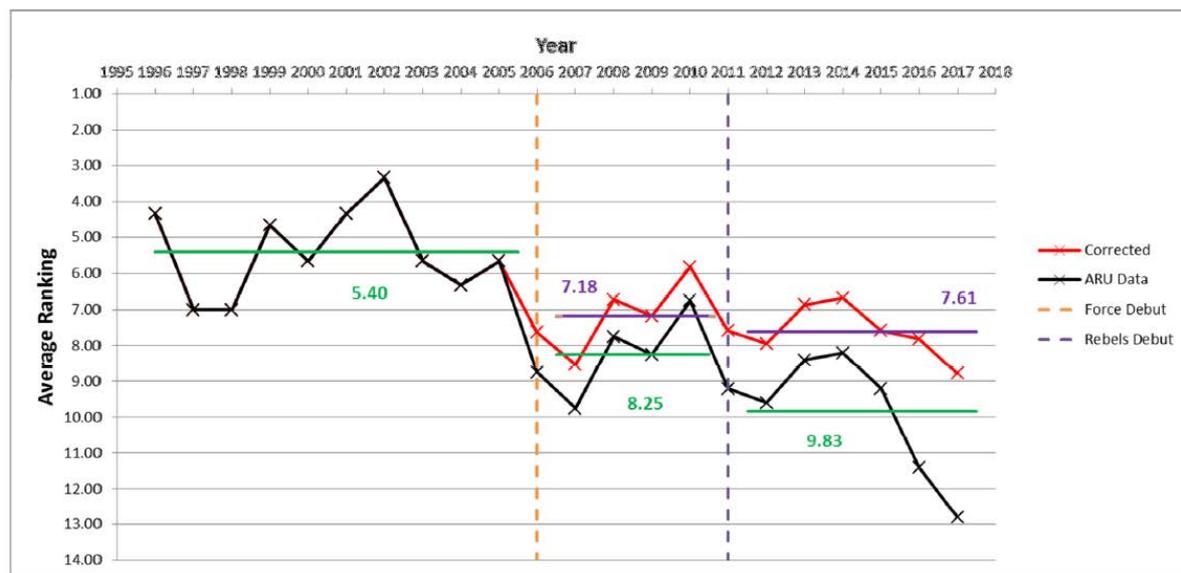
2.19 The committee received evidence, however, that team performance was not dramatically declining in the way the ARU suggested.

2.20 For example, some submitters pointed out that during this period Australian Super Rugby teams won the Super Rugby title twice and the Wallabies were runners up at the 2015 Rugby World Cup.<sup>20</sup>

2.21 Submitters Dr David Masters and Mr Andrew Luscombe separately drew to the committee's attention that Graph 2.2 was not adjusted to account for the increased number of teams in the competition.<sup>21</sup> Once adjusted, Dr Masters and Mr Luscombe note that the trend remains down, but by a lesser factor than Graph 2.2 suggests.

2.22 Mr Luscombe recreated the graph but adjusted the mathematical method to account for the increase in the number of teams. Mr Luscombe's graph is below.

*Graph 2.3—Australian Super Rugby team performances corrected for increase in teams*



Source: Mr Andrew Luscombe, *Submission 7*, [p. 7].

2.23 Mr Luscombe observed that:

<sup>19</sup> Mr Clyne, *Committee Hansard*, 16 October 2017, p. 12.

<sup>20</sup> Mr Angus Tibbits, *Submission 11*, p. 5; Name withheld, *Submission 15*, p. 10.

<sup>21</sup> Dr David Masters, *Submission 3*, pp. 8–9; Mr Andrew Luscombe, *Submission 7*, [pp. 6, 7].

The main thing to note is that much of the decline in the ARU chart is due to the mathematical method. As the number of teams increases, this causes the line to trend downward. Once 18 teams is reached, the gap due to mathematical method is large – bigger in fact than the decline in performance.<sup>22</sup>

2.24 Mr Luscombe suggested to the committee that the difference in the mathematical method had the capacity to alter how the Board interpreted the data:

If the benefits of moving to 4 teams were seen to be as small...they possibly would not have made the same decision. Based on the shape of the charts, the ARU may also have misunderstood the nature of the problem facing Super Rugby, and the required solutions.<sup>23</sup>

### *Committee view*

2.25 The committee understands that the ARU considered solvency and team performance to be two of the major issues that determined its view to support the SANZAAR decision to adopt a 15-team competition for the 2018 season and beyond. However, the committee also notes the views of rugby fans who have serious concerns with the ARU's justifications for removing an Australian Super Rugby team.

### **The decision to remove the Western Force**

2.26 As noted in Chapter 1, the ARU announced that the Western Force would be removed from the Super Rugby competition on 11 August 2017.<sup>24</sup> However, the committee heard that many in the rugby community, not just in Western Australia but across the nation, questioned when the ARU actually made the decision to remove a team and how that decision was made.

### *Timeline*

2.27 The table below outlines the key dates in the decision making process which culminated in the decision to remove the Western Force from the Super Rugby competition.

*Table 2.1 – Timeline of key events*

<b>Time</b>	<b>Event</b>
2006	Western Force joins Super 14 rugby competition as the fourth Australian team. <sup>25</sup>
2011	Melbourne Rebels join Super Rugby.
25 June 2015	Western Force approach ARU for \$800 000 loan. <sup>26</sup>

22 Mr Andrew Luscombe, *Submission 7*, [p. 7].

23 Mr Andrew Luscombe, *Submission 7*, [p. 7].

24 See paragraph 1.1.

25 RugbyWA, *Annual Report 2006*, p. 1.

26 Mr Mark Sinderberry, answer to question on notice 13, 20 September 2017 (received 3 October 2017).

December 2015	Western Force submitted a proposal to the ARU which included a request for advance payments in line with previous request made to the ARU by other clubs. The proposal was declined after a number of months had elapsed. <sup>27</sup>
2 June 2016	Western Force is acquired by the ARU from RugbyWA (the body that governs rugby union in Western Australia) under the Alliance Agreement (which would allow RugbyWA to buy back the Western Force under certain conditions). <sup>28</sup>
10 March 2017	SANZAAR Executive Committee decides to adopt a 15-team format that requires the removal of one of Australia's Super Rugby teams.
7 April 2017	ARU Board is provided with analysis that considers removal of the ACT Brumbies, Western Force and Melbourne Rebels.
9 April 2017	ARU Board approves the decision to revert to a 15-team Super Rugby competition.  ARU Board resolves that the Brumbies will be retained based on superior on-field and financial metrics.  ARU Board announces that either the Western Force or the Melbourne Rebels will be eliminated after consultation. <sup>29</sup>
10 April 2017	ARU Chief Operating Officer, Mr Rob Clarke, and Chief Financial Officer, Mr Todd Day, meet with Western Australia Rugby Union Inc (RugbyWA). <sup>30</sup>  RugbyWA commences proceedings against the ARU in the Supreme Court of Western Australia. <sup>31</sup>
27 April 2017	Mr Tony Howarth, Chairman, RugbyWA sends an email to ARU Chairman, Mr Cameron Clyne, advising that Mr Andrew Forrest AO is '100 percent behind the Force'. <sup>32</sup>
20 June 2017	Australian member unions vote to defeat a motion to retain five Australian Super Rugby teams proposed by Victoria Rugby Union and the Rugby Union Players' Association (RUPA). <sup>33</sup>
19 July 2017	The last of the 13 SANZAAR broadcast deals is modified for a 15-team competition bringing the Alliance Agreement to an end. <sup>34</sup>

27 Mr Sinderberry, *Committee Hansard*, 20 September 2017, p. 36.

28 *Western Australian Rugby Union v Australian Rugby Union* [2017] NSWSC 1174, [6].

29 ARU, *Supporting Documentation*, [p. 6],

30 Mr Tony Howarth, Chairman, Western Australian Rugby Union, *Committee Hansard*, 20 September 2017, p. 31.

31 ARU, *Supporting Documentation*, [p. 10].

32 Mr Howarth, *Committee Hansard*, 20 September 2017, p. 31.

33 ARU, *Supporting Documentation*, [p. 11].

31 July – 1 August 2017	Arbitration takes place between RugbyWA and the ARU. <sup>35</sup>
4 August 2017	Negotiations between the ARU and Imperium Sports Management Pty Ltd (Imperium) to acquire the Melbourne Rebels' licence irretrievably break down.  Imperium transfers the Rebels' licence to Victorian Rugby Union. <sup>36</sup>
11 August 2017	Arbitrator rules that the ARU can remove the Western Force as the Alliance Agreement was at an end.  ARU Board announces that it will discontinue the Western Force licence in the Super Rugby competition. <sup>37</sup>
22 August 2017	Mr Andrew Forrest AO meets with ARU Board representatives in Adelaide. <sup>38</sup>
5 September 2017	NSW Supreme Court dismisses RugbyWA's appeal against the arbitration decision. Decision of the court is published. <sup>39</sup>
6 September 2017	Senate refers the Future of rugby union in Australia to the Community Affairs References Committee for inquiry and report. <sup>40</sup>

### ***The ARU's decision making process***

2.28 The ARU decided early in the process that the Queensland Reds and New South Wales Waratahs would not be considered for elimination as they represented the two biggest Rugby Union markets in Australia.<sup>41</sup>

2.29 To determine which team was to be removed from the competition, the ARU developed a scorecard. The scorecard included internal and external qualitative and quantitative data to assess the performance of the ACT Brumbies, the Melbourne Rebels and the Western Force across a range of financial, commercial, high-performance, economic and general market criteria. The scorecard assessed each team on the following criteria:

- Financial performance: including community investment, ARU support (historical funding), future financial risk, full season memberships, average attendances, TV viewership, state participation numbers, and state club numbers.

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34 *Western Australian Rugby Union v Australian Rugby Union* [2017] NSWSC 1174, [8].

35 ARU, *Supporting Documentation*, [pp. 11–12].

36 ARU, *Supporting Documentation*, [p. 4].

37 ARU, *Supporting Documentation*, [p. 11].

38 ARU, *Supporting Documentation*, [p. 8].

39 *Western Australian Rugby Union v Australian Rugby Union* [2017] NSWSC 1174.

40 *Journals of the Senate*, No. 58, 6 September 2017, p. 1873.

41 ARU, *Supporting Documentation*, [p. 5].

- Rugby - High Performance factors: including historical team performance, quality of program and future potential (people, infrastructure, systems, strategy), Wallaby contribution, and player salaries.
- Rugby - Commercial factors: including Stadium commitments, Government support and infrastructure, market analysis of sports fans and people interested in Rugby, market size as a percentage of the Australian Rugby fan base, market interest in the team and Super Rugby competition, social media metrics, and competitive landscape.
- Other factors: including status of economy, market implications.<sup>42</sup>

2.30 The scorecard was provided to the ARU Board on 7 April 2017.<sup>43</sup> The ARU advised the committee that the ACT Brumbies had been removed from consideration in the review process as the Brumbies had scored highest across a number of on and off-field criteria in the scorecard.<sup>44</sup>

2.31 Following the ARU Board's meeting on 9 April 2017, the ARU announced that the Board had agreed to reduce the number of Australian Super Rugby teams from five to four, and that the decision had been narrowed to two teams: the Melbourne Rebels and the Western Force.<sup>45</sup> The Western Force subsequently launched legal action in the Supreme Court of Western Australia against the ARU on 10 April 2017.<sup>46</sup>

2.32 In addition to the scorecard, the ownership of the Melbourne Rebels and the Western Force was fundamental to the decision making process. The ARU explained that at the time of the review process, the licence for the Melbourne Rebels was privately owned by Imperium Sports Management Pty Ltd (Imperium).<sup>47</sup> This meant that the ARU did not have the unilateral right to withdraw the Melbourne Rebels' licence in order to remove the team from the Super Rugby competition.<sup>48</sup>

2.33 The ARU told the committee that there were only two ways the ARU could acquire the Melbourne Rebels' licence: a negotiated settlement or an insolvency event.<sup>49</sup>

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42 ARU, *Supporting Documentation*, [pp. 5–6].

43 Mr Pulver, *Committee Hansard*, 20 September 2017, p. 3.

44 Mr Pulver, *Committee Hansard*, 20 September 2017, p. 2.

45 ARU, '[ARU to Consult Force and Rebels as Super Rugby Moves to 15 Teams in 2018](#)', *Media release*, 10 April 2017.

46 ARU, *Supporting Documentation*, [p. 10].

47 Mr Pulver, *Committee Hansard*, 20 September 2017, p. 4. See also: ARU, *Supporting Documentation*, [p. 4].

48 Mr Pulver, *Committee Hansard*, 20 September 2017, p. 4.

49 Mr Pulver, *Committee Hansard*, 20 September 2017, p. 4.

2.34 It is also important to note, Victorian Rugby Union President, Mr Tim North QC, an expert in commercial law and contractual matters,<sup>50</sup> made the observation that there were only four licenses at the time of the decision to move from five to four Australian teams:

It also should be noted, with respect to the position as at the date upon which the announcement was made, that a decision had been put forward—that was on 10 April 2017—that there were in fact not five Super Rugby licensees in Australia but four Super Rugby licensees. They were not only Super Rugby licensees but voting members of the Australian rugby constitution and therefore entitled to vote and attend two sessions of the general meeting of the Australian Rugby Union.

The fifth member was a team by the name of Western Force, and it was owned and controlled, amongst other professional rugby assets, by the Australian Rugby Union and was therefore under the control of the Australian Rugby Union board. That asset was held by the board for the benefit of all of the members of the Australian Rugby Union.<sup>51</sup>

2.35 The due diligence process conducted by the ARU revealed that insolvency was a very real prospect for the Melbourne Rebels. The ARU informed the committee that they were in confidential negotiations with Imperium regarding the acquisition of the licence throughout the review process.<sup>52</sup> However, these negotiations irretrievably broke down on 4 August 2017 when the Melbourne Rebels' licence was transferred from Imperium to the Victorian Rugby Union.<sup>53</sup>

2.36 In addition to this, Mr Pulver commented that the Melbourne Rebels were very close to insolvency at the point where the ARU were to commence due diligence, he stated:

As part of our process of negotiating with the Melbourne Rebels we got to the point where we were able to conduct due diligence on the Melbourne Rebels. And it was clear to us at that point that there were serious financial concerns which could potentially result in an insolvency event. In fact, at the 12th hour minor shareholders within the Melbourne Rebels came forward with incremental capital to prop up the enterprise, which removed it from the prospect of insolvency.<sup>54</sup>

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50 Mr Tim North QC, President, Victorian Rugby Union, *Committee Hansard*, 11 October 2017, pp. 19–20.

51 Mr North, *Committee Hansard*, 11 October 2017, p.17.

52 Mr Pulver, *Committee Hansard*, 20 September 2017, p. 4.

53 ARU, *Supporting Documentation*, [p. 4].

54 Mr Pulver, *Committee Hansard*, 20 September 2017, p. 4.

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2.37 In contrast, the Western Force licence had already been transferred to the ARU following an Alliance Agreement between RugbyWA and the ARU in June 2016.<sup>55</sup>

2.38 The ARU told the committee that ultimately, the deciding factor was which team had the better financial prospects going forward.<sup>56</sup> The ARU informed the committee that while the Western Force outperformed the Melbourne Rebels in some areas, such as higher participation numbers, the financial outcome favoured retaining the Melbourne Rebels.<sup>57</sup>

2.39 Despite the Melbourne Rebels and Western Force requiring support from the ARU historically, and the Melbourne Rebels consuming in excess of 50 per cent of the unbudgeted \$28 million in financial support from the ARU, the basis for measuring financial resilience was based on future projections, not past performance.<sup>58</sup>

2.40 The financial modelling undertaken by the ARU calculated a best case and worst case scenario, taking into account a number of factors affecting each team.

2.41 The worst case modelling for the Western Force considered that the team's Road Safety Commission sponsorship was not guaranteed beyond 2017 and the reported balance of the 'Own the Force' fund as at 11 August 2017 was \$1.8 million.<sup>59</sup> The best case scenario took into account a pledge made by Mr Andrew Forrest AO on 31 July 2017 to fully fund the 'Own the Force' initiative up to its full value of \$5 million and assumed that the Road Safety Commission sponsorship would be extended to 2020. Graph 2.4 below projects the ARU's cash balance based on each scenario.<sup>60</sup>

*Graph 2.4—Financial forecast for keeping Western Force and exiting Melbourne Rebels (best and worst case)*

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55 Mr Howarth, *Committee Hansard*, 20 September 2017, p. 30. For further information on the Alliance Agreement see below.

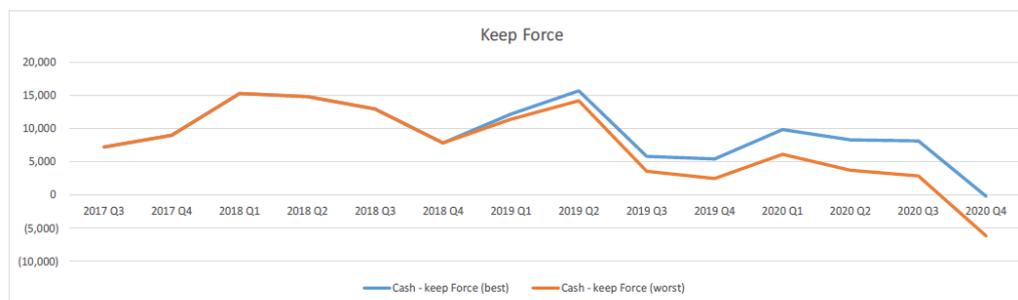
56 Mr Pulver, *Committee Hansard*, 20 September 2017, pp. 4, 16.

57 Mr Pulver, *Committee Hansard*, 20 September 2017, p. 4.

58 Mr Pulver, *Committee Hansard*, 20 September 2017, pp. 20, 24.

59 ARU, *Supporting Documentation*, [p. 3.].

60 ARU, *Supporting Documentation*, [p. 4].

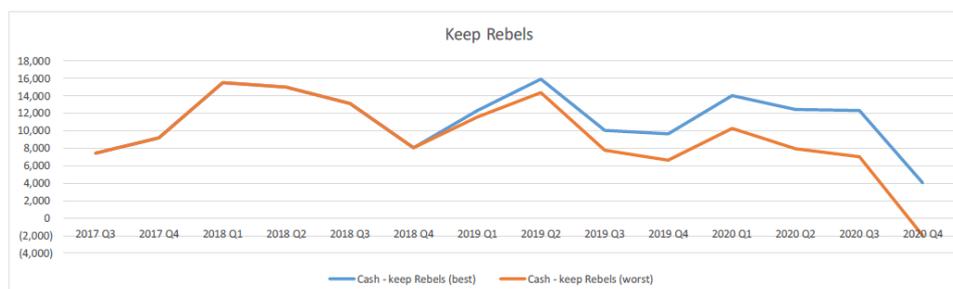


	2017 Q3	2017 Q4	2018 Q1	2018 Q2	2018 Q3	2018 Q4	2019 Q1	2019 Q2	2019 Q3	2019 Q4	2020 Q1	2020 Q2	2020 Q3	2020 Q4
Cash - keep Force (best)	7,215	8,994	15,312	14,823	12,926	7,861	12,139	15,700	5,846	5,460	9,846	8,260	8,109	(179)
Cash - keep Force (worst)	7,215	8,994	15,312	14,823	12,926	7,861	11,389	14,200	3,596	2,460	6,096	3,760	2,859	(6,179)

Source: ARU, *Supporting Documentation*, [p. 4].

2.42 The best case and worst case financial modelling undertaken on the Melbourne Rebels took into account whether a funding commitment from the Victorian Government to the Victorian Rugby Union and ARU was realised through until 2025. Graph 2.5 below projects the ARU's cash balance based on each scenario.

*Graph 2.5—Financial forecast for keeping Melbourne Rebels and exiting Western Force (best and worst case)*



	2017 Q3	2017 Q4	2018 Q1	2018 Q2	2018 Q3	2018 Q4	2019 Q1	2019 Q2	2019 Q3	2019 Q4	2020 Q1	2020 Q2	2020 Q3	2020 Q4
Cash - keep Rebels (best)	7,415	9,194	15,512	15,023	13,126	8,061	12,339	15,900	10,046	9,660	14,046	12,460	12,309	4,021
Cash - keep Rebels (worst)	7,415	9,194	15,512	15,023	13,126	8,061	11,589	14,400	7,796	6,660	10,296	7,960	7,059	(1,979)

Source: ARU, *Supporting Documentation*, [p. 4].

2.43 The ARU advised the committee that it was unable to reveal the value of the agreement with the Victorian Government due to confidentiality agreements.<sup>61</sup> The Hon. Michael Murray MLA, the Western Australian Minister for Sport and Recreation, one of the Western Australian Government representatives during discussions with the ARU, told the committee that he believed the commitment was valued at \$20 million.<sup>62</sup>

2.44 Ahead of the arbitration ruling being handed down, the ARU requested that RugbyWA provide a 'best and final business case' on the Western Force.<sup>63</sup> The ARU stated that the business case provided by RugbyWA on 2 August 2017 lacked any

61 Mr Pulver, *Committee Hansard*, 20 September 2017, pp. 19–20.

62 The Hon. Michael Murray, Minister for Sport and Recreation, Western Australian Parliament, *Committee Hansard*, 11 October 2017, p. 2.

63 ARU, *Supporting Documentation*, [p. 12].

evidence of binding commitments of financial support or any other representations which the ARU could rely on in reaching its decision on the future viability of the Western Force.<sup>64</sup>

2.45 RugbyWA dispute this, reflecting on the support of Mr Forrest and the 'Own the Force' campaign. Chairman of RugbyWA, Mr Tony Howarth stated in his opening statement:

We regard that as incorrect. Some of the extracts say that finance behind RugbyWA is not uncertain. Andrew Forrest's commitment is publicly available. Our view of the prospect of the 'Own the Force' campaign had moved from highly confident to absolutely certain. We considered the commitment by Mr Forrest as a verbal contract.<sup>65</sup>

2.46 Mr Howarth also confirmed he sent an email to Mr Pulver on 27 April 2017 confirming Mr Forrest's support.<sup>66</sup>

2.47 The purpose of the arbitration was to determine whether the ARU had a legal right to end the Alliance Agreement and remove the Western Force from Super Rugby.<sup>67</sup>

2.48 Following the transfer of the Melbourne Rebels' licence from Imperium to the Victorian Rugby Union on 4 August 2017, and the Arbitrator's ruling on 11 August 2017 that the Alliance Agreement was at an end, the ARU formally announced the decision to remove the Western Force from the Super Rugby competition.<sup>68</sup>

2.49 The ARU acknowledged that its failure to secure the Melbourne Rebels' licence meant that a number of people in the rugby community felt the decision making process was 'somewhat of a charade'.<sup>69</sup>

2.50 Minister Murray also informed the committee that in his view, 'the ARU has not been open, transparent or objective throughout the entire process on what criteria teams would be evaluated on and how a decision to reduce the number of teams would be made'.<sup>70</sup>

2.51 Accordingly, the Minister advised the committee that the Western Australian Government had sought advice from the state solicitor on any possible legal avenues that may be open to them regarding commitments made by the ARU.<sup>71</sup>

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64 ARU, *Supporting Documentation*, [p. 8].

65 Mr Howarth, *Committee Hansard*, 20 September 2017, p. 30.

66 Mr Howarth, *Committee Hansard*, 20 September 2017, p. 31.

67 *Western Australian Rugby Union v Australian Rugby Union* [2017] NSWSC 1174, [12].

68 Australian Rugby Union, '[ARU to Discontinue Western Force Super Rugby Licence](#)', *Media release*, 11 August 2017.

69 Mr Pulver, *Committee Hansard*, 20 September 2017, p. 4.

70 Minister Murray, *Committee Hansard*, 11 October 2017, p. 1.

71 Minister Murray, *Committee Hansard*, 11 October 2017, p. 2.

***When was the decision made?***

2.52 The committee heard from a number of submitters who believed that some consideration was given to removing the Western Force prior to 2017 and may have coincided with the negotiation of the Alliance Agreement in 2016.

2.53 Minister Murray, told the committee that he believed the decision had already been made by the ARU:

I believe...that they'd made the decision and worked backwards to justify it.<sup>72</sup>

2.54 The ARU board were aware of a number of strategic options for the future of rugby union in Australia which included the option of going from five to four teams, prior to the finalisation of the Western Force Alliance Agreement.

2.55 The committee also notes that the ARU management commissioned a report by Accenture in April 2016 and the report ultimately made a recommendation that the number of teams be cut to four. Despite Mr Clyne disputing the ARU were looking to cut a team prior to the delivery of that report, the committee notes the timeline of the report being drafted, from April 2016 onwards coincides with the negotiation and finalisation of the Western Force Alliance Agreement which ultimately meant the ARU had secured the licence of the Western Force.

***RugbyWA – ARU Alliance Agreement***

2.56 In 2014, the Western Force realised that the team was entering a period of financial difficulty. Mr Howarth, Chairman of RugbyWA told the committee that:

It became clear in 2014 that, unless the ARU's policies changed, the financial position of the club would end in insolvency. Over the previous 10 years the Waratahs, the Reds and the Brumbies received somewhere between \$10 million and \$20 million each in player payments over and above those provided to Force players. The Rebels were provided with additional funding of some \$17 million by the ARU. Up until 2014, the Western Force had not sought any financial assistance from the ARU, and, indeed, had created its own elite pathway, the Future Force Foundation, which has been funded by local rugby supporters and is now producing Wallabies.<sup>73</sup>

2.57 Mr Mark Sinderberry, the former Chief Executive Officer of the Western Force, explained to the committee that a number of factors, including a decline in the Western Australian economy, a decrease in the share of broadcast revenue flowing to Super Rugby teams, poor on field performance and the failure to replace a major sponsor, led RugbyWA to approach the ARU for financial assistance.<sup>74</sup>

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72 Minister Murray, *Committee Hansard*, 11 October 2017, p. 4.

73 *Committee Hansard*, 20 September 2017, p. 30.

74 *Committee Hansard*, 20 September 2017, p. 32–33.

2.58 Mr Pulver outlined that the state economy and future demand projections did not play an 'overly influential' role in the metrics used to decide which team to cull.<sup>75</sup>

2.59 In an answer to a question on notice, Mr Sinderberry provided the committee with an email that demonstrates that RugbyWA sought an \$800 000 loan from the ARU in June 2015.<sup>76</sup>

2.60 Mr Sinderberry explained that, at that time, the ARU was under financial pressure from other teams:

At that time the Brumbies had burnt through I think a \$9 million windfall from a land sale. The Rebels were costing the ARU approximately \$3 million a year, and the ARU had taken over the Rebels.<sup>77</sup>

2.61 According to RugbyWA, instead of providing a loan the ARU presented an alternate proposal:

Instead, the ARU wanted to work with us to establish a new model, similar to that of the New Zealand model where centralised player and coach contracts were allowed and the ARU and the clubs were able to benefit financially through centralisation and building scale and operational support. Whilst we were very sceptical of the centralisation of services, the RugbyWA board was supportive of the alignment of players and coaching staff to the high-performance unit of the ARU. We felt it was our best chance in the short term to start to address the building of further talent within the team and therefore being able to offer fans a better game-day experience and thus starting to turn around the financial challenges.<sup>78</sup>

2.62 The proposal would become known as the Alliance Agreement. The Alliance Agreement provided that RugbyWA would receive \$4 million in return for transferring the Western Force Super Rugby licence and the Western Force's intellectual property to the ARU. As part of the Alliance Agreement, the Western Force would gain access to the ARU's high performance unit and RugbyWA would have the capacity to purchase the Super Rugby licence back from the ARU.<sup>79</sup>

2.63 However, the Alliance Agreement also contained the following term that had the capacity for the ARU to bring the Alliance Agreement to an end and take full ownership of the Western Force Super Rugby licence at the end of the agreement:

**Term** means the period commencing on the Commencement Date and ending on the expiry date of the last of the SANZAR Broadcast Agreements (being 31 December 2020) or...if the last of the SANZAR Broadcast Agreements is terminated or renegotiated earlier as a result of the

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75 Mr Pulver, *Committee Hansard*, 20 September 2017, p. 17.

76 Mr Mark Sinderberry, answers to questions on notice, 20 September 2017 (received 3 October 2017).

77 Mr Sinderberry, *Committee Hansard*, 20 September 2017, p. 33.

78 Mr Howarth, *Committee Hansard*, 20 September 2017, p. 30.

79 Mr Howarth, *Committee Hansard*, 20 September 2017, p. 30; Mr Clyne, *Committee Hansard*, 16 October 2017, p. 11.

renegotiation of the commercial terms of a broadcast arrangement, such earlier date.<sup>80</sup>

2.64 A necessary implication of altering the format of the Super Rugby competition was a need to renegotiate the 13 SANZAAR broadcast agreements. The last of those agreements was renegotiated on 19 July 2017.<sup>81</sup>

2.65 The ARU argued that from 19 July 2017 it had the right to bring that agreement to an end, meaning that it would unconditionally own the Western Force licence and could bring the licence to an end.<sup>82</sup>

2.66 Submitters to this inquiry questioned the inclusion of this term in the agreement and its subsequent use to remove the Western Force from the competition.<sup>83</sup>

2.67 Working from public statements, submitters observed that the ARU may have considered removing a team about the time that the Alliance Agreement was being negotiated:

Given the ARU had doubts about the viability of five Australian teams since the expansion in 2011, and that they started the process to reduce the numbers within a few weeks of signing the Alliance Agreement, it defies credulity that the ARU did not consider the possibility that the agreement could be used to remove the Force.<sup>84</sup>

2.68 That suggestion was supported by a set of ARU Board minutes from the meeting on 18 August 2016 indicating that ARU management considered the removal of one Australian Super Rugby team to be 'preferable' both financially and from a high performance perspective.<sup>85</sup>

2.69 Submitters also suggested that the ARU provided the term in a revised version of the Alliance Agreement as a mechanism that could be used to remove the Western Force at a later date.<sup>86</sup>

#### *Date of the decision*

2.70 A number of submitters suggested to the committee that they believed that the decision to remove the Western Force was made on or about 9 April 2017.<sup>87</sup>

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80 *Western Australian Rugby Union v Australian Rugby Union Ltd* [2017] NSWSC 1174, [3].

81 *Western Australian Rugby Union v Australian Rugby Union Ltd* [2017] NSWSC 1174, [8].

82 *Western Australian Rugby Union v Australian Rugby Union Ltd* [2017] NSWSC 1174, [12].

83 RUPA, *Submission 1*, [p. 11]; Name withheld, *Submission 4*, [pp. 2, 4]; Mr Gary Gleeson, *Submission 8*, p. 6; Name withheld, *Submission 15*, [p. 9].

84 Name withheld, *Submission 4*, [p. 2].

85 Name withheld, *Submission 13*, p. 3.

86 Name withheld, *Submission 13*, [p. 1].

87 Minister Murray, *Committee Hansard*, 11 October 2017, p. 6; Government of Western Australia, answers to questions on notice, 11 October 2017, p. 2 (received 20 October 2017); Mr John Welborn, *Committee Hansard*, 11 October 2017, p. 37.

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2.71 One person who thought the decision to remove the Western Force was made on that date was Minister Murray:

It was when there was some press out there and some of the board flew to Western Australia. It was my gut feeling that they were going to make an announcement that the Force was out on that day. I was very surprised when they went back to the other side of the world that they didn't make that decision—very, very surprised. There was all the gossip. Football, and sport, is very good at gossip. That was the feeling everyone had. But they didn't make that decision. That was somewhere around April or May.<sup>88</sup>

2.72 On notice, the Minister clarified that he believed that the announcement was going to be made on 10 April 2017.<sup>89</sup>

2.73 The perception that the decision had already been made was informed by his dealings with the ARU in attempting to save the Western Force:

I had several meetings with the board or their executive, and they were very open and honest in saying, 'Look, this is a problem; maybe we can do this and maybe we can do that.' So we worked very closely to try to make sure we gave Western Force every chance. But, no matter which way we turned, it seemed like a decision was already made.<sup>90</sup>

2.74 On 10 April 2017 RugbyWA had a meeting with ARU managers Mr Rob Clarke, then the Chief Operating Officer and Mr Todd Day, the Chief Financial Officer. RugbyWA officials told the committee that the ARU's analysis was biased towards the Melbourne Rebels:

A PowerPoint was put on a screen which showed that by retaining the Rebels the ARU would be financially better off. The information was at a very high level without any supporting analysis. Even limited questioning of the numbers quickly revealed that the information was strongly biased towards the Rebels. Some of the issues that we spoke about included [Mr] Clarke confirming that they were still looking to make a decision within the next couple of days.<sup>91</sup>

2.75 RugbyWA pointed to two other factors that they found concerning:

In subsequent days we were able to ascertain from the Rebels' owner that the Rebels had been assured that they were safe in this process. Consequently, it was revealed that the ARU had also given our confidential alliance agreement to the chairman of Victorian Rugby Union without our knowledge or consent.<sup>92</sup>

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88 *Committee Hansard*, 11 October 2017, p. 6.

89 Government of Western Australia, answers to questions on notice, 11 October 2017, p. 2 (received 20 October 2017).

90 Minister Murray, *Committee Hansard*, 11 October 2017, p. 4.

91 Mr Howarth, *Committee Hansard*, 20 September 2017, p. 31.

92 Mr Howarth, *Committee Hansard*, 20 September 2017, p. 31.

2.76 However, Mr Clarke vigorously denied that any assurances had been provided.<sup>93</sup>

2.77 The committee received evidence that Mr North, President of the Victorian Rugby Union had been provided with a copy of the Alliance Agreement by the ARU on 12 April 2017.<sup>94</sup> However, the ARU suggested that the Western Force had previously published the Alliance Agreement on a public website, something RugbyWA directors denied.<sup>95</sup>

2.78 Mr North also confirmed the Alliance Agreement was a topic of discussion at a meeting between himself, Mr Pulver, Mr Clarke and Mr Hawkins. Whilst Mr North could not recall who provided a copy of the document, he stated:

I think I can recall this: I'm fairly certain that Mr Hawkins gave me a copy of the writ of summons, which led me to ask for a copy of the alliance agreement. That is the best that I can recall at the present moment.<sup>96</sup>

2.79 Mr North also confirmed he asked his secretary to copy the document:

**Senator REYNOLDS:** Did you say that, at that meeting, those documents and the agreement were photocopied and handed around?

**Mr North:** No. I asked my secretary to take the documents on the table, which had been looked at by me and Mr Hay, and asked for them to be photocopied because they were provided to us for the purposes of the discussion in relation to the suggested targeting of teams in the Super Rugby competition.<sup>97</sup>

2.80 Chairman of RugbyWA, Mr Howarth, earlier told the committee:

RugbyWA felt there was little choice other than to seek an injunction against the ARU taking action to shut down the team without due process. In subsequent days we were able to ascertain from the Rebels' owner that the Rebels had been assured that they were safe in this process. Consequently, it was revealed that the ARU had also given our confidential alliance agreement to the chairman of Victorian Rugby Union without our knowledge or consent.<sup>98</sup>

2.81 The assertion by Mr Howarth that the Rebels had been assured they were safe in the process is supported by the statement made by Mr North mentioned earlier in this report that:

That there were in fact not five Super Rugby licensees in Australia but four Super Rugby licensees. They were not only Super Rugby licensees but

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93 Mr Clarke, *Committee Hansard*, 11 October 2017, p. 28.

94 Mr North, *Committee Hansard*, 11 October 2017, p. 19.

95 Mr Clyne, *Committee Hansard*, 16 October 2017, p. 18; Mr John Edwards, Vice-Chairman, RugbyWA, correspondence received 19 October 2017, [p. 1].

96 Mr North, *Committee Hansard*, 11 October 2017, p. 24.

97 Mr North, *Committee Hansard*, 11 October 2017, p. 24.

98 Mr Howarth, *Committee Hansard*, 20 September 2017 p. 31.

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voting members of the Australian rugby constitution and therefore entitled to vote and attend two sessions of the general meeting of the Australian Rugby Union. The fifth member was a team by the name of Western Force, and it was owned and controlled, amongst other professional rugby assets, by the Australian Rugby Union and was therefore under the control of the Australian Rugby Union board. That asset was held by the board for the benefit of all of the members of the Australian Rugby Union.<sup>99</sup>

2.82 Mr North further stated:

... I made it perfectly plain to the people from the ARU that there was no power either in the constitution of the Australian Rugby Union or under the participation deed for the Melbourne Rebels for them to target the Melbourne Rebels. There was no basis under the constitution to do so.<sup>100</sup>

2.83 It is the view of the committee that possessing a copy of the Alliance Agreement would have further strengthened Mr North's resolve in the above respect.

2.84 Mr John Welborn told the committee that he believed that a decision had been made by at least by mid-July:

My initial observation from those conversations [with ARU Board members and other rugby stakeholders] was that it appeared that a decision had already been made. That wasn't directly told to me but implied by the apologetic nature of those conversations... It appeared that a mindset had been created, which was that the Western Force was going to be removed.<sup>101</sup>

2.85 According to Mr Welborn, the ARU did not appear to be interested in trying to find a possible solution to save the Western Force, despite apparently generous offers being proposed by Mr Forrest to support the team:

...I would describe as the total intransigence of the ARU board with regard to considering new opportunities and the very real potential, even as late as July... The number of opportunities that have come the way of Minderoo [Mr Forrest's company] and myself and the other people involved with looking at these opportunities have been immense, but at no point did it appear, and certainly there was no indication, that there was a strong exploration of or interest in any outcome other than the one we've arrived at.<sup>102</sup>

2.86 Mr Clyne presented evidence in his opening statement which confirmed he had a telephone conversation with RugbyWA director Mr David Vaux, in advance of the Adelaide meeting with Mr Forrest:

On the Sunday prior to the meeting, I had a telephone conversation with Rugby WA director David Vaux where I outlined the enormous obstacles

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99 Mr North, *Committee Hansard*, 11 October 2017, p. 17.

100 Mr North, *Committee Hansard*, 11 October 2017, p. 24.

101 *Committee Hansard*, 11 October 2017, p. 36.

102 Mr Welborn, *Committee Hansard*, 11 October 2017, p. 37.

that existed to preserve the Western Force in Super Rugby. Essentially, as I explained, the only option available to the ARU or Rugby WA was to establish a financial case for the creation of a 16-team Super Rugby competition, which could be presented to SANZAAR. Even then, with the SANZAAR executive committee voting unanimously for a 15-team format, which was backed by all 13 international Super Rugby broadcasters, the prospects of any change in course would require a significant financial injection. This same view was presented to Andrew Forrest and his team in the meeting in Adelaide two days later.<sup>103</sup>

2.87 Following Mr Clyne's evidence, the committee received correspondence from Mr Vaux confirming the telephone conversation with Mr Clyne. Mr Vaux outlines in detail the terms of a possible agreement he claims were presented to him which would have seen the Western Force re-instated:

Mr Clyne called at 2.22pm on Sunday 20 August 2017 and said to me that the process of determining an Australian team to drop from the Super Rugby Competition had been very, very difficult for him, and that he was personally very hurt by media commentary and comments by Andrew Forest [sic] about his role and the ARU's approach. He had been warned not to do business with Mr Forest and told not to trust him. However, notwithstanding these feelings, he had been instructed by his board to make a "Without Prejudice" proposal. He said that the ARU would retain the Western Force in the Super Rugby Competition on the following conditions:

- (i) Mr Forest would underwrite the Western Force's financial position for the remaining 3 years of the Broadcasting Agreements, and an additional 5 years which would arise from the next cycle of Broadcasting Agreements;
- (ii) The Western Force would receive equal funding from the ARU to the other 4 Australian Super Rugby teams;
- (iii) To compensate the ARU for having to continue to provide an ongoing \$6m contribution to the Western Force, Mr Forest would provide funding to the ARU for grass roots rugby for \$6m a year over the 3 + 5 year period, \$48m in total;
- (iv) Mr Forest would provide SANZAR compensation for the additional costs of going from 15 to 16 teams, namely \$20m; and
- (v) If this proposal was agreed to, then Mr Clyne and the rest of the ARU board would resign and a new board would appoint the next CEO.<sup>104</sup>

2.88 The ARU, however, told the committee that no decision was made until the announcement was made on 11 August 2017 because insolvency remained a real possibility for the Melbourne Rebels:

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103 Mr Clyne, *Committee Hansard*, 16 October 2017, p. 2.

104 Mr David Vaux, Director, RugbyWA, correspondence received 19 October 2017, pp. 2–3.

As part of our process of negotiating with the Melbourne Rebels we got to the point where we were able to conduct due diligence on the Melbourne Rebels. And it was clear to us at that point that there were serious financial concerns which could potentially result in an insolvency event. In fact, at the 12th hour minor shareholders within the Melbourne Rebels came forward with incremental capital to prop up the enterprise, which removed it from the prospect of insolvency.<sup>105</sup>

2.89 The committee have since been made aware through a confidential submission that the ARU suggested Imperium exercise a put option and were involved in negotiations which cleared Melbourne Rebels debt thereby allowing the put option to the Victorian Rugby Union to be exercised. These events took place in June 2017 and effectively made it impossible to end their licence.

2.90 This is despite testimony from Mr Clyne stating 'But I have said there was a very real option that both teams were being considered right through until August.'<sup>106</sup>

### **Player welfare**

2.91 It was made clear to the committee that the ARU had little regard to the welfare of the players in its decision to remove the Western Force.

2.92 Minister Murray expressed his concern to the committee that it appeared the ARU had not considered the impact that the review process would have on the mental health of players, and in particular the prospect of players losing their jobs.<sup>107</sup>

2.93 In its submission, RUPA noted that:

In every Australian team there are players and staff whose livelihoods and wellbeing have been compromised through this protracted process...<sup>108</sup>

2.94 RUPA's submission went on to outline the impact that the review process had on the Western Force:

[p]layers, staff and their families at the Western Force have been put under unprecedented and, quite frankly, completely unreasonable duress throughout this ridiculous and destructive process.<sup>109</sup>

2.95 RUPA informed the committee that it had a staff member with the Western Force to support the welfare of players and that RUPA had referred a number of players to external psychologists or specialist support this year. Mr Ross Xenos, Chief Executive Officer of RUPA, also noted that the ARU had allowed RUPA to take the lead on supporting the welfare of players and while supportive of RUPA's efforts, Mr Xenos felt that the ARU could have had a more direct presence.<sup>110</sup>

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105 Mr Pulver, *Committee Hansard*, 20 September 2017, p. 4.

106 Mr Clyne, *Committee Hansard*, 16 October 2017, p. 13.

107 Minister Murray, *Committee Hansard*, 11 October 2017, p. 5.

108 RUPA, *Submission 1*, [p. 6].

109 RUPA, *Submission 1*, [p. 12].

110 Mr Xenos, *Committee Hansard*, 11 October 2017, p. 16.

***Committee view***

2.96 The committee heard strong concerns about the process the ARU used to decide which team would be removed from the Super Rugby competition. The ARU's conduct and disregard for the welfare of the Western Force players is of particular concern to the committee. The private nature of the process and limited transparency meant fans and supporters had little to no visibility of the process other than media commentary and speculation, and therefore could not understand why the ARU arrived at the decision they did.

2.97 The committee notes that the ARU's solvency issues would have been apparent when they participated on the SANZAAR decision making process to cut the number of Super Rugby teams.

2.98 The committee understands that the team's financial positions, and in particular the commitments of government support, were crucial to the final decision, although the nature of these are in dispute and will be discussed later in this report. The committee considers that the acquisition of the Melbourne Rebels' licence also played a crucial role.

2.99 The committee notes the concerns of submitters about the use of the Alliance Agreement to end Western Force's participation in Super Rugby. The committee accepts that the removal of a team was not the initial objective of that agreement and that some mutual benefits flowed from its execution. However, the committee is concerned that the possibility of removing a Super Rugby team in the future may have been anticipated by ARU management during the negotiations.

2.100 The committee believes that, despite the analysis undertaken by the ARU to decide which team to eliminate, the Western Force was the only licence that could be legally terminated prior to the due diligence and analysis process taking place.

2.101 Confidential evidence provided to the committee shows the ARU were directly involved in the execution of the transfer of the Melbourne Rebels' licence from Imperium to Victorian Rugby Union. The committee understands these negotiations were well underway by June 2017.

2.102 The committee has significant concerns that the decision to remove the Western Force was made earlier than 11 August 2017 and was skewed against the Western Force by not placing enough emphasis on historic financial data, and the ownership structure of the Melbourne Rebels.

# Chapter 3

## Corporate Governance

3.1 In the course of this inquiry, the committee heard concerns about the Australian Rugby Union (ARU) both as a steward of the game and as a corporate organisation. This chapter first examines the way the ARU has managed rugby union in Australia before considering the concerns raised by submitters about the ARU's corporate governance.

### Stewardship of the game

3.2 In particular, submitters raised concerns about the decision to expand the Super Rugby competition to include 18 teams, the conduct of the sale of the Melbourne Rebels to Imperium Sports Management Pty Ltd (Imperium) and the level of funding to grassroots rugby clubs.

#### *Expansion to 18 teams*

3.3 Some submitters raised concerns that the ARU had been warned that expanding the Super Rugby competition to 18 teams would be financially detrimental to the sport.<sup>1</sup>

3.4 The Rugby Union Players' Association (RUPA) told the committee that it had commissioned a report in 2014 that proposed contracting rather than expanding the size of the competition:

In March 2014, RUPA provided the Australian Rugby Union with a report co-produced by sports media consultancy Global Media & Sports. The report analysed key commercial trends and performance metrics within the sports industry, and rugby specifically, before drawing a number of key recommendations. This was headlined by concern for the sustainability of the proposed expansion to an 18 team Super Rugby competition and advocating strongly for the adoption of a smaller Australasian or trans-Tasman competition.<sup>2</sup>

3.5 Another submitter was more specific about the contents of the report. Mr Angus Tibbits advised the committee that the report concluded that the decision to expand to 18 teams may end Australian Super Rugby:

It is likely that by the time of the subsequent broadcast agreement renewal (meaning that due in 2020) that Australia's second tier of professional competition [Super Rugby] will have been destroyed.<sup>3</sup>

3.6 Mr Tibbits advised that one conclusion from that report called on the ARU to reject the proposed expansion to 18 teams:

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1 Mr Angus Tibbits, *Submission 11*, p. 8.

2 Mr Ross Xenos, Chief Executive Officer, Rugby Union Players' Association (RUPA), *Committee Hansard*, 11 October 2017, p. 8.

3 Mr Tibbits, *Submission 11*, p. 8 (Square brackets in original).

Either the management of Australian rugby has the courage to face up to that reality and force change with its SANZAR partners, or it will continue over the precipice it has now reached.<sup>4</sup>

3.7 RUPA told the committee that the ARU had acknowledged the report and its recommendations, but concluded that the benefits of expansion outweighed the costs:

The ARU noted their agreement to the sentiment of the RUPA-GMS recommendations but were confident that the broadcast uplift from the mooted 18 team competition would be more than sufficient to compensate for its shortfalls.<sup>5</sup>

3.8 In his appearance before the committee, Mr Clyne also acknowledged the 18-team competition was a 'poor format' and a contributing factor to the financial challenges facing the ARU. Mr Clyne stated:

I think there is the poor format of the 18-team competition, but, if I go back, the expansion from three to four to five saw a step-down in performance from 60 per cent of wins to 50 to 40. It's quite clear that Australia doesn't have the playing depth to support five teams and that fans simply don't turn up to watch teams that aren't performing, and that just exacerbates the financial competition.<sup>6</sup>

3.9 Mr Tibbits concluded that the decision to expand to 18 teams directly contributed to the cessation of the Western Force:

The ARU Board did not heed this prognosis and instead elected to put the interests of Australia second and opted for the expanded 18-team format for Super Rugby. That decision became the death knell of the Western Force.<sup>7</sup>

### ***Concerns about the handling of the Melbourne Rebels***

3.10 Submitters raised a number of concerns about decisions made by the ARU in connection with the Melbourne Rebels.

3.11 The first was the decision to support a fifth Australian franchise. One submitter noted that, at the time of the expansion, the ARU had few financial reserves:

The addition of another team was always going to be expensive for the ARU and yet they decided to do it at a time when they were already financially stretched. In the year that the ARU obtained SANZAR's agreement (2009), the ARU had posted a net deficit for the year of \$279,000. Things improved slightly in 2010 but only enough to enable the ARU to post a fairly meagre net surplus of \$1 million.<sup>8</sup>

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4 Mr Tibbits, *Submission 11*, p. 8.

5 Mr Xenos, *Committee Hansard*, 11 October 2017, pp. 7–8.

6 Mr Clyne, *Committee Hansard*, 16 October 2017, p. 3.

7 Mr Tibbits, *Submission 11*, p. 8.

8 Name withheld, *Submission 15*, p. 2 (emphasis removed).

3.12 The submitter noted that this was a relatively weak base from which to expand professional Australian rugby.<sup>9</sup>

3.13 The second concerned the manner in which the ARU sold the Melbourne Rebels in 2015. On 1 July 2013, the foundation shareholders walked away from the venture. At that time, the shares in the Melbourne Rebels were 'parked' with the Victorian Rugby Union and the ARU acquired effective control of the Melbourne Rebels.<sup>10</sup>

3.14 During 2014 the ARU started to explore a private ownership model for the Melbourne Rebels, saying:

...what we wanted to look at was a private ownership model, which had occurred in other markets. It's questionable it has worked in other markets. At the end of the day, that was seen to be a superior option to any other option.<sup>11</sup>

3.15 To seek a private purchaser for the Melbourne Rebels, the ARU conducted private discussions with a number of individuals:

There was a combination of both, in terms of soliciting, talking to some people and, in other cases, people approaching us—and this occurs.<sup>12</sup>

3.16 Whilst the comments were made in a slightly different context, one submitter noted that the ARU's decisions to privately transfer a licence or to remove a team could be contrast with the process run to gain entry to Super Rugby:

By way of contrast. [sic] the process in which WA gained admission to the Super Rugby competition in 2006 was totally transparent with formal expressions of interest sought, published criteria for assessment, opportunity to present cases, independence and objectivity in the decision-making process etc.<sup>13</sup>

3.17 Mr Rob Clarke, who was the Chief Executive Officer of the Melbourne Rebels at the time of privatisation, confirmed that no public expression of interest was sought.<sup>14</sup>

3.18 Despite the private nature of the process, the ARU received two bids for the financially struggling team, one from a group of Melbourne business people led by Mr Alan Winney and a second from Mr Andrew Cox and Imperium.<sup>15</sup>

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9 Name withheld, *Submission 15*, p. 2.

10 Mr Tim North QC, President, Victorian Rugby Union, *Committee Hansard*, 11 October 2017, p. 20; Mr Peter Leahy, *Committee Hansard*, 11 October 2017, p. 42; Name withheld, *Submission 15*, p. 3.

11 Mr Cameron Clyne, Chairman, Australian Rugby Union (ARU), *Committee Hansard*, 16 October 2017, p. 13.

12 Mr Clyne, *Committee Hansard*, 16 October 2017, p. 7.

13 Name withheld, *Submission 12*, [p. 1].

14 *Committee Hansard*, 11 October 2017, p. 30.

3.19 The committee also received confidential evidence that additional stakeholders may have put in bids if they had known the team was for sale.

3.20 Submitters also raised concerns about the terms on which the Melbourne Rebels were sold to Imperium.

3.21 Under the terms of the agreement, the licence was transferred to Imperium debt free, for zero consideration.<sup>16</sup> The sale agreement also included two opportunities for Imperium to exercise a 'put option'.<sup>17</sup> Halsbury's Laws of Australia describes a put option as 'the right, but not the obligation, to sell the subject matter of the option to the writer [another party] at a pre-determined price'.<sup>18</sup>

3.22 The committee heard that in order for the Melbourne Rebels to become debt free, the ARU forgave \$13 million in loans to the Melbourne Rebels.<sup>19</sup> In addition to this, the committee understands debts to other creditors owed by the Melbourne Rebels were also paid. In response to a question by Senator Reynolds, Mr Clarke stated:

**Senator REYNOLDS:** In terms of buying it debt free for \$1, I also understand they got cleared of creditors of about another \$1.8 million, which the ARU paid for, is that correct?

**Mr Clarke:** That could be right.

**Senator REYNOLDS:** What do you mean by 'could be right'?

**Mr Clarke:** I don't have the annual report in front of me and I don't have the figures in front of me.

**Senator REYNOLDS:** As chief operating officer, if you didn't know whether the Melbourne Rebels had any debts that needed to be cleared, were you aware that they had debts that the ARU undertook to clear?

**Mr Clarke:** I believe that it was handed over debt free, if that's the question.

**Senator REYNOLDS:** So, whether it's \$1.8 million or more, there were debts to be cleared?

**Mr Clarke:** That's correct.<sup>20</sup>

3.23 One submitter questioned the transaction from Mr Cox's position:

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15 Mr Alan Winney, *Submission 19*, [p. 2]; Mr Pulver, *Committee Hansard*, 20 September 2017, p. 4.

16 Mr William Pulver, Chief Executive Officer, ARU, *Committee Hansard*, 20 September 2017, p. 4; Mr North, *Committee Hansard*, 11 October 2017, p. 26; Mr Rob Clarke, *Committee Hansard*, 11 October 2017, p. 32.

17 Mr Clyne, *Committee Hansard*, 16 October 2017, p. 12.

18 LexisNexis, *Halsbury's Laws of Australia*, '120-Corporations' [120-20005] (at 23 August 2016).

19 Mr Pulver, *Committee Hansard*, 20 September 2017, pp. 21, 22, 29; Name withheld, *Submission 15*, p. 7.

20 *Committee Hansard*, 11 October 2017, p. 32.

My submission asks 'what was in it for Cox?'. What businessman worth his salt would go near a company that was so unprofitable that it had accumulated losses of just under \$24 million in just four years with no prospect of that changing? We know that the ARU gave it to him on a plate having cleared all the debt and persuaded the shareholders to hand over their shares to Cox for nothing, but that still left the question of how on earth was Cox going to make this company profitable.<sup>21</sup>

3.24 One suggestion the committee received was that the ARU agreed to pay the Melbourne Rebels, in addition to the approximately \$5.8 million provided to all Super Rugby teams from 2016,<sup>22</sup> an additional \$5.5 million between 2016 and 2020.<sup>23</sup> The ARU confirmed that additional incremental funding was provided and that the agreement was front end loaded so that most of the money was paid out between 2016 and 2018.<sup>24</sup>

3.25 However, due to the commercial nature of the negotiations between the ARU and Imperium, the committee was not able ascertain whether any conditions were attached to these funds.<sup>25</sup>

3.26 Mr North confirmed the existence of a unit trust associated with Imperium which provided unit holders with an interest in the company.<sup>26</sup> Confidential evidence provided to the committee asserts a member of the Victorian Rugby Union board had an interest in that trust.

3.27 The agreement between the ARU and Imperium could be contrast with the proposal from Mr Winney whose bid was in the following terms:

The Winney Consortium bid to buy the Rebels from the ARU was to pay \$100 for the Super Rugby participation licence and the club's intellectual property. It proposed that the Consortium would then recapitalise the club with \$6 million in new equity, to take effect from the handover date. The Consortium advised that all matters up to 31 December 2014 would remain as the responsibility of the ARU and that all matters related to the post 31 December 2014 period would be the responsibly of the buyer. The buyers would absorb the anticipated 2015 losses, but were seeking the same uplift in TV rights payments in 2016-2020 period that would be paid to the other Australian Super Rugby teams.<sup>27</sup>

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21 Name withheld, *Submission 15*, p. 7.

22 Mr Pulver, *Committee Hansard*, 20 September 2017, p. 23.

23 Name withheld, *Submission 15*, p. 7.

24 Mr Pulver, *Committee Hansard*, 20 September 2017, p. 22; Name withheld, *Submission 15*, pp. 7–8.

25 Mr Pulver, *Committee Hansard*, 20 September 2017, p. 22; Name withheld, *Submission 15*, p. 10.

26 Mr North, *Committee Hansard*, 11 October 2017, p. 21.

27 Mr Alan Winney, *Submission 19*, [p. 2].

3.28 The ARU did not appear to undertake any due diligence on the Winney Consortium's proposal but did request \$1 million be placed in trust to protect the ARU from an event of moral hazard, the ARU withdrew this requirement during the negotiations.<sup>28</sup>

3.29 Whilst it is not clear that these bids were actively being pursued at the same time, Mr Clarke confirmed that ARU management was aware of the offer:

My understanding was that, at high level, the two approaches were considered and the ARU formed a view that Andrew Cox's approach was better—or his offer was a better solution... But certainly ARU were aware of an alternative option. And how far the ARU management at the time took that I'm not sure.<sup>29</sup>

3.30 According to Mr Winney, the consortium withdrew from the negotiations because the ARU was 'unwilling...to negotiate on key terms'.<sup>30</sup>

3.31 Some submitters questioned the way that the ARU handled these transactions because it exposed the ARU to additional risks at a time when it may not have been able to afford it:

Whilst the ARU itself was not in a position of financial distress, the ARU was becoming distressed that, as essentially the lender of last resort, given the obligations in the broadcast deal, it would need to step in and bail out one, two and possibly even three of the Super Rugby teams at that point.<sup>31</sup>

3.32 At the same time, the cost of funding Super Rugby came at the expense of the lower levels of the game.

### ***Grassroots rugby***

3.33 At the start of the inquiry the ARU acknowledged that there was some discontent among grassroots stakeholders about investment in the lower levels of the game:

...if there were to be Senate inquiry, it could well have been brought by grassroots stakeholders in the game asking, 'Why are you not investing more money in the grassroots of the game, because growing the participation of young boys and young girls is a key measure?'<sup>32</sup>

3.34 Throughout this inquiry, the intersection between the elite game and the grassroots was a recurrent concern.

3.35 The ARU explained to the committee that grassroots participation was a major factor in many of the reviews that have been conducted into ARU governance:

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28 Mr Alan Winney, *Submission 19*, [p. 2].

29 Mr Rob Clarke, *Committee Hansard*, 11 October 2017, p. 30.

30 Mr Alan Winney, *Submission 19*, [p. 2].

31 Mr Xenos, *Committee Hansard*, 11 October 2017, p. 12.

32 Mr Pulver, *Committee Hansard*, 20 September 2017, p. 6.

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I can confidently say grassroots participation would have been a significant component of probably most of them. The majority of them go back to governance. In my five years in Australian rugby, perhaps the single biggest issue I have been trying to deal with is the governance of the sport. It goes back to your first question—that, as the chief executive of the governing body, I actually do not control the implementation strategy at a state level. That is extremely frustrating.<sup>33</sup>

3.36 RUPA suggested to the committee that the tension between the ARU and community rugby had been occurring for sometime:

...for a long time the relationship between club rugby on the east coast and the ARU has been strained. There was some well-publicised press at the end of last year about several key past players—former Wallabies and former coaches—coming out and expressing their discontent with the ARU for how it was running the game and that change needed to occur in how much that level of the game was being prioritised.<sup>34</sup>

3.37 Grassroots stakeholders consider that the lower level of competition needs to be prioritised because it fosters the future of the sport. As one submitter suggested:

Without the fan base there is no audience to generate broadcasting revenues and without the grassroots there is no sport to present to the fans.<sup>35</sup>

3.38 Another submitter suggested that reducing funding to the grassroots was already having an effect on player numbers in New South Wales:

...the ARU has failed to foster and promote Rugby throughout Australia, but rather it has by its focus on elite rugby, driven down grassroots rugby and player participation numbers, so that the real player participants in 2017 are down by more than 15% on the real player participants in 2014...<sup>36</sup>

3.39 The submitter also advised that the downturn in players was having an economic effect on those grassroots clubs:

Grassroots rugby has watched as more than \$200 million has been wasted on the elite level of the game in the last three years, while there is a diminishing return on the humble club bbq and canteen because player numbers are down.<sup>37</sup>

3.40 This can be contrast with the significant growth in grassroots rugby in Western Australia during the tenure of the Western Force.

3.41 The Western Australian Government told the inquiry that there had been a substantial increase in rugby players in Western Australia during this period:

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33 Mr Pulver, *Committee Hansard*, 20 September 2017, p. 6.

34 Mr Xenos, *Committee Hansard*, 11 October 2017, p. 10.

35 Mr Tibbits, *Submission 11*, p. 11.

36 Mr David Hawkins, *Submission 6*, p. 2.

37 Mr David Hawkins, *Submission 6*, p. 6.

During the time of the Western Force, rugby in WA grew four-fold in numbers and spread into new communities in Western Australia. A complete pathway was established from grassroots through to national and international competition through the Western Force and the Wallabies.<sup>38</sup>

3.42 That sentiment was anecdotally supported by submitters from Western Australia who told committee that Western Australian rugby organisers had no trouble attracting players:

...in other parts of the country, especially Western Australia, Rugby is actually growing. In WA the major problem facing Rugby organisers is not recruiting players, it is finding grounds to put them on.<sup>39</sup>

3.43 However, some submitters question whether that will continue with the removal of the Western Force. As one parent told the committee:

...[there are] legions of WA kids who have come all the way through the WA system dreaming of playing for the Wallabies. My two sons now age 17 and 18 still have that dream. They are amongst dozens of quality players raise in this positive environment just emerging from junior ranks. Just when it appeared everything is finally coming together the ARU destroys it with no alternative put in place. No attempt at a Plan B. Just the total abandonment of WA. My boys and their friends are shattered. They've even talked of abandoning the game altogether and taking up AFL.<sup>40</sup>

3.44 Mr Gary Gleeson explained to the committee that the Western Force brand is also used for a number of other rugby union teams in Western Australia, including the Junior Gold Cup and the men's and women's sevens teams. Mr Gleeson urged that the intellectual property acquired in the Alliance Agreement, including the names Western Force and Perth Spirit, be returned to RugbyWA.<sup>41</sup>

3.45 Many of the submitters to this inquiry expressed some level of frustration with the ARU. Mr Ross Xenos, Chief Executive Officer of RUPA suggested to the committee that perhaps the reason for the discordance between grassroots participants and fans and the ARU stems from the underpinning structure of the game:

If we look at the structures within Australian rugby, we have not really adapted any of our underpinning competitions or platforms to embrace professionalism, to the point where it could be said that club rugby on the east coast has never really fallen into an integrated pathway in terms of how it supports the professional game and how the professional game supports it. I think some of those underlying issues remain unresolved, and this has led to tension in relationships. Whilst that doesn't directly lead us to the conversation about how many Super Rugby teams we have, I think that there are some broader issues within Australian rugby which essentially set up what I believe is an environment of distrust rather than an environment

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38 Western Australian Government, *Submission 18*, p. 2.

39 Mr Gary Gleeson, *Submission 8*, p. 3.

40 Mr Gary Gleeson, *Submission 8*, p. 5.

41 Mr Gary Gleeson, *Submission 8*, p. 6.

where all stakeholder groups are very closely working together. This is an issue that I know the ARU is trying to work really hard to change and I know it is trying to be more transparent, but unfortunately it does feel like it has been reactive to what has occurred most recently.<sup>42</sup>

3.46 The ARU told the committee that it remains committed to grassroots rugby in Western Australia and to providing a pathway to the national and international competition for young players.<sup>43</sup>

### **Corporate governance**

3.47 Submitters have also raised concerns about the corporate governance of the ARU.<sup>44</sup>

3.48 The ARU is a public company limited by guarantee with the Australian Company Number 002 898 544.<sup>45</sup>

3.49 Directors of the ARU are required to comply with all of the obligations of company directors under the *Corporations Act 2001* (Cth) (Corporations Act).<sup>46</sup>

3.50 These obligations include:

- exercising their powers and discharging their duties with the degree of care and diligence that a reasonable person would exercise;<sup>47</sup> and
- exercising their powers in good faith, in the best interests of the company and for a proper purpose.<sup>48</sup>

3.51 The ARU also has particular reporting requirements, including:

- preparing a financial report and a directors' report each year;<sup>49</sup>
- ensuring that the financial statements provide a true and fair view of the financial position of the company;<sup>50</sup>
- ensuring that the directors' report:
  - gives details of any significant changes on the entity's state of affairs during the year;<sup>51</sup> and

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42 Mr Xenos, *Committee Hansard*, 11 October 2017, p. 10.

43 Mr Pulver, *Committee Hansard*, 11 October 2017, p. 3.

44 New South Wales Rugby Union, *Submission 5*, pp. 1–3, 5–7; Mr David Hawkins, *Submission 6*, p. 5; Mr Tibbits, *Submission 11*, pp. 5–12; Name withheld, *Submission 16*, pp. 1–2, 5; Name withheld, *Submission 17*, pp. 2–3.

45 Australian Securities and Investments Commission, *Company Summary: Australian Rugby Union Limited*, accessed 20 October 2017.

46 See for example *Corporations Act 2001* (Cth), ss. 180–184.

47 *Corporations Act 2001* (Cth), s. 180.

48 *Corporations Act 2001* (Cth), s. 181.

49 *Corporations Act 2001* (Cth), s. 292.

50 *Corporations Act 2001* (Cth), s. 297.

- gives details of any significant matter or circumstance that has arisen since the end of the year that has significantly affected, or may significantly affect the entity's operations on future financial years.<sup>52</sup>

### ***ARU's Concise Financial Report 2016***

3.52 One submitter raised concerns about the ARU's compliance with its reporting obligations in its *Concise Financial Report—31 December 2016*.<sup>53</sup>

3.53 As detailed in Chapter 1, South Africa, New Zealand, Australia and Argentinian Rugby Union (SANZAAR) made a final decision to adopt the 15-team format from 2018 and remove two South African and one Australian Super Rugby teams on 10 March 2017.<sup>54</sup>

3.54 On 22 March 2017, Mr Clyne and Mr Pulver signed the ARU Directors' report in its *Concise Financial Report—31 December 2016* for the preceding year.<sup>55</sup>

3.55 The ARU Directors' report for 2016 covered the reporting year to 31 December 2016.<sup>56</sup> The submitter suggested that there was a requirement under company law that required the ARU to disclose material items that occurred after the reporting date.<sup>57</sup>

3.56 Paragraph 7 of the ARU's *Concise Financial Report—31 December 2016* states that no material item, transaction or event took place between 31 December 2016 and 22 March 2017 that would significantly affect the operations of the company in future financial years:

#### **7. Events subsequent to reporting date**

In the interval between the end of the financial year and the date of the report, no item, transaction or event of a material and unusual nature has arisen, in the opinion of the Directors of the Company, to affect significantly the operations of the Company, the results of those operations, or the state of affairs of the Company in future financial years.<sup>58</sup>

3.57 However, paragraph 8 of the Directors' report suggests that there are likely developments that are not disclosed in the report:

51 *Corporations Act 2001* (Cth), s. 299(1)(b).

52 *Corporations Act 2001* (Cth), s. 299(1)(d).

53 Name withheld, *Submission 17*, p. 3.

54 ARU, *Supporting Documentation*, [p. 5], <http://www.rugbyaustralia.com.au/portals/1/SUPPORTING-DOCUMENTATION-THE-FUTURE-OF-SUPER-RUGBY.pdf> (accessed 8 November 2017) (Supporting Documentation); Mr Pulver, *Committee Hansard*, 20 September 2017, p. 2.

55 ARU, *Annual Report 2016*, p. 54.

56 ARU, *Annual Report 2016*, p. 51.

57 Name withheld, *Submission 17*, p. 3.

58 ARU, *Annual Report 2016*, p. 54.

## 8. Likely developments

Further information about likely developments in the operations of the Group and the expected results of those operations in future financial years has not been included in this report because disclosure of the information would be likely to result in unreasonable prejudice to the Group.<sup>59</sup>

3.58 The submitter questioned how Mr Clyne and Mr Pulver could sign a statement that said that there had been no material change that would affect the ARU's operations in future financial years when the removal of an Australian Super Rugby team would probably have a financial impact on the company:<sup>60</sup>

On the 10 [sic] March the ARU had told the SANZAAR meeting in London that they would reduce the Australian Licensees from five to four. Certainly one fifth of the Super Rugby teams would be considered material.<sup>61</sup>

3.59 At the hearing on 16 October 2017, Mr Clyne was given an opportunity to respond to the suggestion that the decision to move from five Australian teams to four teams was a matter that had the potential to affect the ARU's operations in future financial years and should have been disclosed.<sup>62</sup>

3.60 While Mr Clyne did not respond to that specific question, he told the committee that paragraphs seven and eight could be reconciled:

Because you're always making financial forecasts and you're making best and worst case scenarios for the future going forward. What we've done is we've faced that scenario on many previous occasions. What we've done in each case is look at the situation and cut costs to the detriment of the game. And that's what we would've done in the future. So we are committed and we understand our fiduciary duty to ensure the entity is solvent.<sup>63</sup>

### *Composition of the Board*

3.61 Submitters from grassroots organisations expressed concerns about the way that ARU Board members are appointed.

3.62 One grassroots submitter explained the nomination process:

Elevation to the ARU Board only happens via a nomination from the Nominations Committee, a committee that is appointed by the ARU Board. No outsiders are permitted.<sup>64</sup>

3.63 This nominations process has its origins in one of the last reviews of the ARU's governance undertaken by the Hon. Mark Arbib. The Nominations Committee process was recommended to prevent conflicts between directors and the member

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59 ARU, *Annual Report 2016*, p. 54.

60 Name withheld, *Submission 17*, [p. 3].

61 Name withheld, *Submission 17*, [p. 3].

62 *Committee Hansard*, 16 October 2017, pp. 16–17.

63 Mr Clyne, *Committee Hansard*, 16 October 2017, p. 17.

64 Mr David Hawkins, *Submission 6*, p. 5.

unions that nominated them and to ensure that the ARU Board was able to obtain a diverse skills-based Board.<sup>65</sup>

3.64 Some grassroots supporters lament that the nomination process has narrowed who can be elected to the Board:

No one from club rugby, schools rugby, junior rugby, regional NSW rugby, and no one from an area of disadvantage has been elected to the ARU Board in the last 10 years.<sup>66</sup>

3.65 However, even the New South Wales Rugby Union advised the committee that it may be worth the ARU revisiting its existing governance arrangements:

Despite the best intentions from the ARU and its affiliates as articulated in the Australian Rugby National Charter, the existing model continues to lack the requisite division of responsibility to foster the long term viability and growth of the sport...the success of Australian rugby union remains conflicted by governance ambiguity.<sup>67</sup>

3.66 Another submitter also suggested it may be time alter the way ARU Board members are nominated:

While Mr Arbib's proposals are ideal in principle, the outcome of their implementation has not been a success. Australian Rugby circa 2017 bears absolutely no similarity to Rugby Australia circa 2012. 5 years under the current regime has seen it's position plummet almost to the point of oblivion. The current ARU Board has demonstrated repeatedly that it does not have the nous [sic] or foresight to evolve...<sup>68</sup>

### ***Committee view***

3.67 The committee acknowledges the concerns that have been expressed by submitters about the stewardship and governance of rugby union in Australia. The committee is concerned by some of the decisions that have been taken by the ARU in recent years and thanks submitters for bringing those concerns to the committee's attention.

3.68 The committee notes the view of submitters that whilst previous recommendations such as those in the Arbib review are ideal in principle, they have not achieved the intent or spirit of the recommendations. In addition, the ARU have undertaken 13 reviews since 2008.<sup>69</sup> The committee has received information on the scope and recommendations contained in these reviews, but no evidence of implementation.

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65 ARU, *Strengthening the governance of Australian Rugby Union*, August 2012, pp. 21–24.

66 Mr David Hawkins, *Submission 6*, p. 5.

67 New South Wales Rugby Union, *Submission 5*, pp. 1–2.

68 Mr Tibbits, *Submission 11*, p. 11.

69 Mr Pulver, *Committee Hansard*, 20 September 2017, p. 6.

3.69 Given the knowledge of both offers to purchase the Melbourne Rebels licence, the committee has significant concerns about the rationale and conditions which led to the ARU's decision that the offer from Imperium was superior. The committee notes that whilst it is aware of the terms of the initial offer from Mr Winney's consortium, the understanding of Imperium's offer is more limited, particularly in relation to conditions placed on funds transferred from ARU to Imperium over the course of ownership.

3.70 The committee has significant concerns about the evidence provided in relation to figures relevant to the Melbourne Rebels' licence transfer to Imperium and witnesses' inability to confirm those figures.



# 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.

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## **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**

## **Labor Senators' Additional Comments**

1.1 Labor members of the committee consider it regrettable that the matters covered by this inquiry ever reached this stage.

1.2 We understand that many in the rugby community remain unhappy with the Australian Rugby Union's (ARU) decision regarding the Western Force and that some in the rugby community hold concerns about the processes leading to that decision.

1.3 However, it is unfortunate that these issues have had to be referred to the Senate for inquiry and were not addressed earlier through other means.

1.4 Labor committee members note the evidence provided to the inquiry by ARU Chairman Mr Cameron Clyne and ARU Chief Executive Officer Mr Bill Pulver, which addressed many of the concerns raised about the removal of the Western Force and the processes around that decision. We also consider that Mr Clyne clearly explained in his testimony to the inquiry why the ARU did not consider reinstating the Western Force to be an option, despite promises that were made by third parties.

1.5 Australia's National Sporting Organisations (NSOs) are not immune to challenges and difficult decisions.

1.6 Labor believes NSOs should be supported to deliver strong, viable, successful elite and professional level competitions along with increased opportunities for grassroots participation for all Australians.

**Senator Sam Dastyari**

**Senator Louise Pratt**

**Senator Murray Watt**



# APPENDIX 1

## Submissions and additional information received by the Committee

### Submissions

- 1 Rugby Union Players' Association
- 2 Confidential
- 3 Dr David Masters
- 4 Name Withheld
- 5 NSW Rugby Union
- 6 Mr David Hawkins
- 7 Mr Andrew Luscombe
- 8 Mr Gary Gleeson
- 9 Mr Sam & Mrs Michelle Nunn
- 10 Confidential
- 11 Mr Angus Tibbits
- 12 Name Withheld
- 13 Name Withheld
- 14 Name Withheld
- 15 Name Withheld
- 16 Name Withheld
- 17 Name Withheld
- 18 Government of Western Australia (plus four attachments)

19 Mr Alan Winney

20 Name Withheld

### **Answers to Questions on Notice**

- 1 Answers to Questions taken on Notice during 20 September public hearing, received from Rugby WA, 29 September 2017
- 2 Answers to Questions taken on Notice during 20 September public hearing, received from Rugby WA, 3 October 2017
- 3 Answers to Questions taken on Notice during 11 October public hearing, received from Victorian Rugby Union, 17 October 2017
- 4 Answers to Questions taken on Notice during 11 October public hearing, received from Mr Rob Clarke, 18 October 2017
- 5 Answers to Questions taken on Notice during 11 October public hearing, received from Rugby Union Players' Association Inc, 18 October 2017
- 6 Answers to Questions taken on Notice during 11 October public hearing, received from State Government of Western Australia, 20 October 2017

### **Correspondence**

- 1 Letter responding to evidence provided at the 16 October 2017 public hearing, received from Mr David Vaux, 19 October 2017
- 2 Letter responding to evidence provided at the 16 October 2017 public hearing, received from Mr David Vaux, 20 October 2017
- 3 Letter responding to evidence provided at the 16 October 2017 public hearing, received from Mr John Edwards, Vice Chairman, RugbyWA, 19 October 2017
- 4 Letter responding to evidence provided at public hearings, received from Mr Andrew Cox, Managing Director, Imperium Group, 10 November 2017
- 5 Letter responding to statements made about him by Mr Leahy at the committee's hearing in Perth on 11 October 2017, received from Mr Gary Gray, Managing Director, SMC Strategies, 14 November 2017

**Tabled Documents**

- 1 Opening statement, tabled by Australian Rugby Union, at Perth public hearing, 20 September 2017
- 2 Opening statement, tabled by State Government of Western Australia, at Perth public hearing, 11 October 2017



## **APPENDIX 2**

### **Public hearings**

*Wednesday, 20 September 2017*

*Quest East Perth, Perth*

#### **Witnesses**

##### **Australian Rugby Union**

PULVER, Mr William, Chief Executive Officer

##### **Western Australia Rugby Union Inc / Western Force**

HOWARTH, Mr Anthony (Tony), Chairman, Western Australia Rugby Union Inc

SINDERBERRY, Mr Mark William, Former Chief Executive, Western Australia Rugby Union Inc; and General Manager, Western Force

*Wednesday, 11 October 2017*

*Four Points by Sheraton Hotel, Perth*

#### **Witnesses**

##### **State Government of Western Australia**

MURRAY, the Hon. Michael, Minister for Sport and Recreation

##### **The Rugby Union Players' Association Inc.**

XENOS, Mr Ross, Chief Executive Officer

##### **Victorian Rugby Union**

NORTH, Mr Tim, QC, President

**CLARKE, Mr Robert**, Private capacity

**WELBORN, Mr John**, Private capacity

**LEAHY, Mr Peter**, Private capacity

*Monday, 16 October 2017*

*Parliament House, Canberra*

**Witnesses**

**Australian Rugby Union**

CLYNE, Mr Cameron, Chairman, Australian Rugby Union