

Senate Submission – Future Of Rugby Union In Australia - David Hawkins

The Committee Secretary
Senate Standing Committee – Community Affairs Reference Committee
PO Box 6100
Parliament House
Canberra ACT 2600

11 October 2017

Dear Committee Secretary,

Subject: Senate Inquiry – The Future Of Rugby Union In Australia

Thank you for the opportunity of making a private submission in relation to the above Inquiry that is due to re-convene on 12 October 2017.

I would ask that my private submissions be considered in two parts: -

(A). Submission One - Unconstitutional Conduct by the ARU; and

(B). Submission Two – Individual submissions to each of your Terms of Reference Headings (a) to (e) inclusive.

My Personal Background:

In making these submissions I do so as an individual who played the game of rugby from the age of 10 years (junior school rugby) to the age of 58 years (Golden Oldies), together with a career of coaching rugby for the last 40 plus years from juniors to seniors, with teams in mens and womens 15s, mens and womens 7s, school boy rugby, junior rugby boys and girls, and junior girls and boys 7s rugby, and continuing.

In addition to my career as a player and coach, I have had the good fortune of joining with other like-minded rugby people in the formation and operation of two new rugby clubs in the Sydney senior and junior competitions that prosper today without any financial assistance from the ARU.

Throughout the whole of my time with rugby I have never held a position for reward from any rugby group/club, with my entire participation being as a volunteer in junior rugby, senior rugby, girls rugby, boys rugby, school boy rugby and Golden Oldies rugby.

My wife and I have contributed a considerable amount of our own funds over the last 20 years in growing rugby, and making rugby accessible to players from a diverse range of socio-economic backgrounds, and we are proud of what we have achieved particularly with Youth Off The Streets Foundation in introducing boys and girls to rugby as a sport.

Submission One – Unconstitutional Conduct by the ARU:

In my opinion, the current management of the ARU has acted and continues to act, outside of its constitutional powers on several fronts, the most recent contravention being the decision to delete the Western Force as a participating Super Rugby team.

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The Constitution of Australian Rugby Union Limited (ACN 002 898 544) underwent a major overhaul in 2012, and again in 2016 – these are relevant dates as the changes in 2012 occur after Super Rugby was established, and the changes in 2016 occur (contrary what the ARU Boards says), after the date of the decision to reduce the number of teams in the Australian conference of Super Rugby.

The Objects of the ARU Constitution appear in Clause (2) (a) to (j) of which the first three Objects are recited as:-

- (a) to act as ‘keeper of the code’ of the Game of Rugby in Australia from the grassroots to the elite level;
- (b) to foster, promote and arrange Rugby throughout Australia;
- (c) to act as the co-ordinator of the activities of the various bodies (whether corporate or unincorporated) which organise Rugby within the various States and Territories of Australia;

In relation to Object (2) (a) the ARU has failed to act as the keeper of the code for all levels of rugby save for the elite level, and it has acted unconstitutionally in abandoning grassroots rugby and the levels of rugby below the elite level, with over 90% of income received by the ARU Board wasted on the elite player group, staffing costs and administration.

Funds and resources for development officers and non-elite coaching staff that were traditionally allocated to junior rugby, school boy rugby, womens rugby and club rugby have been withdrawn under the administration of the current Board of the ARU.

Moreover, and in an endeavor to offset losses incurred by the current Board of the ARU by its failed participation in Super Rugby, the ARU introduced an individual Player Participation Fee, which is a new fee levied on every player, from U6 juniors to senior players, both male or female. These fees are not reinvested in grassroots rugby, and so the ARU is firstly acting unconstitutionally in the levy of this fee on grassroots rugby, and secondly in its allocation to cover Super Rugby and elite rugby losses.

In relation to Object (2)(b) 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 – real player participants are those who play rugby on a regular basis, who are members of registered junior and senior clubs, or those who attend primary and high schools that traditionally play rugby.

Contrary to ARU Board calculations, the inclusion of thousands of kids who have had a ‘rugby experience’ for 30 minutes over the last two years does not enable the ARU Board to claim that these participants are ‘registered participants’ nor should they be included in any promotional submissions to Government relating to the inclusiveness of rugby throughout Australia.

Rugby in traditional NSW schools is dying, and the number of participants has been greatly reduced under this ARU Board’s administration – funds have been withdrawn by the ARU Board for promotion of schools rugby, and the appointment of development officers has been frozen/eliminated.

Likewise with junior rugby in NSW, the largest junior rugby playing participant State at Village Club level, player participant numbers have substantially reduced between 2014 and 2017 as a direct consequence of funding reduction by the ARU Board. The introduction of the new Player Participation Levy has impacted registrations, and there is now only one development office for all of the Sydney Region Village Clubs compared to more than 30 development officers retained by AFL.

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Despite being constitutionally bound to foster rugby, the current ARU Board is ignoring rugby at grassroots level, and the decision to deny the Western Force the ability to play in the Super Rugby competition will crush participation in Western Australia, which by definition under Object (2)(b) is one of the States and Territories for which the ARU Board is obliged to foster, promote and arrange rugby.

In relation to Object (2)(c) the ARU Board has acted unconstitutionally in that it is only enabled by its own Constitution to act as co-ordinator of the activities of the rugby bodies in the States and Territories that control rugby in those States and Territories, rather than dictate how those activities are implemented. Under this Object of the Constitution the ARU Board has no power to take the decision to delete the Western Force from competing in a national competition without the concurrence of Western Australia Rugby.

In summary, the collective outcome of the unconstitutional actions of the ARU Board in breaching the first three Objects in its own Constitution, render it incapable of continuing to act as the ‘keeper of the code of the Game of Rugby’ and require that the whole ARU Board should be dismissed for acting contrary to its Constitution. It follows from this that any act, such as the decision to eliminate the Western Force from the Australian Super Rugby Conference would void ab initio.

Submission Two – Terms of Reference (a) to (f) Inclusive:

Terms of Reference (a) – ARU Deliberations To Reduce Super Rugby Teams:

The ARU Board has now confirmed its decision to cut the Western Force from the Australian Super Rugby Conference of Teams, and will seek to implement this decision in 2018 as the ARU considers itself part of SANZAR, although any constructed relationship with SANZAR must be subordinate to the ARU Constitution.

The decision to expand the number of teams in the Super Rugby competition conducted by SANZAR to 18 teams was taken after the ARU Constitution was updated in 2012, yet the Objects of the Constitution were not changed.

The decision to cut the Western Force in 2018 was taken after the 2016 amendments to the ARU Constitution, without any change to the Objects of the Constitution, and also without making SANZAR a separate Object of the Constitution. In effect, this makes SANZAR no more relevant in 2017 to the core Objects of the ARU, than it was when the ARU Constitution was first accepted.

It has been claimed by the Chairman of the ARU Board that Western Australia Rugby will still have a place in a Nation Rugby Competition, however from 2018 onwards under the ARU proposal there will be no National Rugby Competition at the elite level equivalent to Super Rugby. There will be a competition at Junior Rugby Level between the States and Territories as required by the Constitution, but none at Senior Rugby Level – the National Rugby Competition (NRC) is not a State and Territory competition, it will not contain teams

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from Tasmania, South Australia or the Northern Territory, and yet it will contain a Fijian team.

As an ARU registered rugby member/coach I was not asked to participate in any forum or discussion about any decision relating to reduction of the teams competing in the 2018 Super Rugby competition. I am a stakeholder, but to the best of my knowledge and belief, stakeholders were not invited to participate in any decision making on this topic.

I have no idea as to whether any decision by the ARU Board evenly addressed the relative strengths and weaknesses of all relevant State and Territory rugby unions in determining their suitability to remain in the Super Rugby Competition, however under the Constitution the ARU Board was obliged to treat all candidates equally in determining their suitability to participate. From evidence taken by the NSW Supreme Court in recent proceedings it would appear that some of the Australian Super Rugby Franchises that will be included in the 2018 SANZAR competition, were treated differently to the Western Force.

The ARU Constitution requires that all States and Territories be treated evenly.

Terms of Reference (b) – Is There a Truly National Rugby Union Footprint in Australia:

Regardless of the decision concerned with cutting the Western Force from the 2018 SANZAR Super Rugby Competition, there remains a national footprint in Australia only at junior level but not at senior level. Teams from Tasmania, South Australia and the Northern Territory do not have a presence at senior rugby level, and there is no national rugby competition involving all States and Territories of Australia, yet all States and Territories have a Rugby presence and competition.

As a consequence of decisions made by the current ARU Board, no longer will States and Territories play each other in a national competition at senior level.

What this will mean for the young players coming through in Western Australia, is that as a consequence of the decision taken by this ARU Board they will no longer be able to play in a national competition at senior level, forcing them to make decisions at an early age to migrate to another State or Territory. In time this will force the junior levels of rugby in Western Australia to fold as they will not be able to offer their participants a pathway towards senior rugby representation for their State.

Accordingly, the answer to this question is in the negative, there will no longer be a National Footprint for Rugby in Australia, and as such this represents a breach of the ARU Constitution in a future practical manner.

Terms of Reference (c) – The role of the national and state-based bodies in encouraging greater national participation in rugby union:

Under the ARU Constitution the ARU Board must be the ‘keeper of the code of the game of rugby in Australia’, and must foster, arrange and promote rugby throughout Australia, and they must co-ordinate the activities of the State and Territories in organising rugby.

My emphasis above is on the words ‘throughout Australia’ because that is what the Constitution requires. It does not say only in those States and Territories where the ARU Board wants to play, foster, arrange, promote and co-ordinate rugby, but rather in all States and Territories.

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By withdrawing funding from grassroots rugby the ARU Board has demonstrated that it has no interest in encouraging greater participation in rugby throughout Australia.

By cutting the Western Force from the Super Rugby Competition the ARU Board has demonstrated that it does not see the game of rugby in Western Australia as part of the national footprint, and that it is prepared to see current elite players leave for other States and Territories, and remove any opportunity for Western Australian junior players to progress unless they abandon Western Australia.

Accordingly, the answer to this question is in the negative, the decision by the ARU Board will diminish participation on a national basis.

Terms of Reference (d) – Corporate governance arrangements of the ARU and State/Territory rugby bodies, and community representation on those bodies:

A simple view of the ARU Constitution and the way in which the ARU operates will provide the answer that there is no community representation, or grassroots rugby representation, in either the national body representing rugby in Australia, or the various States and Territories.

The whole structure is that of a private company where only those considered to be friends of the existing ruling elite are able to take a seat at either the ARU Board or any of the State and Territory Boards.

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.

The ARU Board ensures that people are only elected to the Board at the recommendation of the Board and the CEO, and its elections are not open to rank and file members of the rugby community as stakeholders.

People who have no rugby association or a background in rugby, become directors and office bearers of the ARU Board without merit, and the result is that these people do not challenge to decisions made by the ARU CEO and Chairman.

The Chairman of the ARU Board has defended this corporate anomaly by saying that this is to ensure that quality people from the corporate world are included on the ARU Board, however in the past five years the ARU has teetered on insolvency and would not have survived without concessions being made by its creditors, and from receiving income in advance from television sponsors for broadcast royalties, and those hosting overseas tournaments involving the elite Australian teams.

The whole system should be overhauled and elections should be free and open as with any other corporation registered under the Corporations Act, enabling all members to vote and elect officials.

The ARU Board has for too long been an assembly of people from privileged backgrounds with the NSW representatives predominately coming from the Mosman area of Sydney.

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.

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Terms of Reference (e) – Impact of reducing the number of teams on national participation in rugby union:

This answer has been covered in Terms of Reference (b) and (c) above

The short answer is that within a short time after this current ARU Board has gone, but within the next five years, there will be a demonstrable reduction in real rugby player participation, and rugby will lose its presence as one of the few truly national participation sports.

Kids are not choosing rugby because the junior rugby clubs do not have the resources to offer coaching and supervision as volunteers because parents are walking away from the game of rugby in disgust at how the Western Force have been treated, and how funds have been taken away from grassroots rugby and handed to the 100 elite players, coaches and administration staff.

The costs of relocation of the ARU to its new state of the art offices at Moore Park is to cost a further \$20 million at a time when grassroots rugby is being denied funds and asked to foot the bill for the ARU largesse.

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.

Conclusion:

This Senate Inquiry is long overdue, so thankfully someone has had the fortitude to conduct an inquiry that might just bring the ARU Board to account.

The game of rugby urgently needs external supervision and restructuring so that the benefits now handed to elite players, player managers, ARU officials and their families, and State/Territory officials are all transparent and assessed as whether those benefits are for the good of the game of rugby as a whole, rather than a few.

The structures that have been put in place to ensure that no one at the ARU Board is open to challenge, must be dismantled.

The Objects of the ARU Constitution must again become paramount and include both grassroots and elite participants, officials and players, so that the game of rugby is accessible to all Australians from all States and Territories, and not just those based on the Eastern Seaboard, and those closeted in the protected surviving Super Rugby franchises.

The game of Rugby should remain accessible to players and participants from all socio-economic backgrounds, and all States and Territories, and not just those who attend private schools in New South Wales and Queensland, or those who have mates on the ARU Board.

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