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Senate Standing Committees on Community Affairs
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Canberra ACT 2600

Thank you for the opportunity to make this submission to the **Inquiry on the Future of Rugby Union in Australia**.

My submission covers the corporate governance aspects of the decision to remove an Australian team from Super Rugby, and specifically the decision to remove the Western Force.

In a post to the TWF supporters forum on August 30 2017 Rugby WA Board Member John Edwards said:

Remember that this all started last year with our Board going to the ARU to ask for a loan. Something every other Franchise had done at least once and in most cases for a higher amount. They came back to us with a "better" idea which was the Alliance. We liked it because it fixed our short liquidity issues and gave us a buy back option (which we started work on immediately) but most importantly it fixed a long term problem of talent equalisation and got them in our tent ... This "Alliance" model was a model the ARU wanted to achieve for all franchises and we were to be the test pilot. Ref <http://twf.com.au/showthread.php?t=39318&page=7&p=438685&viewfull=1#post438685>

Further, on September 6 2017, Rugby WA President Hans Sauer posted to the same forum:

In March 2016 we notified the ARU we were going to need help at the end of the season. Considering they had previously bailed out the Rebels, QRU and NSWRU we thought we'd ask first. One plan was that if they rejected us, we would need to fast track a few other options.

BUT HEY - they came to us and said " we can help, in fact our intention is to follow the NZ model and centralise high performance and own all of the licences - we can then leverage a whole package to sponsors, we can move players like they do in N.Z. and if we start with you guys and prove the model, we can then sell it to the other franchises". Ref <http://twf.com.au/showthread.php?t=39340&page=13&p=439531&viewfull=1#post439531>

and further on in that post:

Let me also say that Bill Pulver acknowledged their commercial team had done zilch to help us on Sponsorship.

In another post Mr Sauer said:

Last year prior to the Argies test, I sat next to Bill Pulver and whilst thanking him for backing us in the Alliance I did commit that we are embarrassed to have to ask for a bail out and we would work darn hard to re-pay it. He told me he was confident we would, our Future Force program was impressive, the board of RugbyWA committed and he looked forward to a long association. Ref <http://twf.com.au/showthread.php?t=39259&page=2&p=436871&viewfull=1#post436871>

Please note the following:

- the initial discussions began around March 2016
- the Alliance Agreement was the idea of the ARU
- it was promoted as the model for all Australian Super Rugby franchises
- it was proposed as a long term solution to enable Rugby WA to grow and be self sufficient
- there was no discussion of it being a vehicle to remove the Western Force
- over three months after the Alliance Agreement was signed the ARU CEO affirmed the agreement and its objectives.

However, other information has subsequently become available that raises serious questions about corporate governance and integrity.

On April 9 2017 the ARU published an article on their rugby.com.au website stating that one Australian team would be removed, and that included the following words:

A SANZAAR process that has already stretched on for nine months is not expected to resolved swiftly. Ref <http://www.rugby.com.au/news/2017/04/09/07/12/sanzaar-super-rugby-announcement>

Nine months before April 9 2017 is within a month of the Alliance Agreement being signed and two months before Mr Pulver sought to reassure Mr Sauer.

Further, in a newspaper article dated April 10, Mr Clyne (ARU Chairman) is quoted as saying

Almost immediately upon expansion to five teams it became apparent that Australia could not sustain that number of teams ... Ref <http://www.dailytelegraph.com.au/sport/rugby/aru-says-cutting-an-australian-team-from-super-rugby-has-been-on-cards-since-2011/news-story/7fcdebdce4fc5fc219fefe1f476f9374>

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.

In a statement after his resignation from the ARU, Mr Geoffrey OAM Stooke said he did not participate in the ARU Board's decision to remove the Western Force from the Super Rugby competition ...

as over the past two months I had been recused from all Board meetings, teleconferences & discussions on the Super Rugby 'culling' process. Yesterday I advised that I would no longer recuse myself but the Chairman believed I couldn't do that & agreed to provide me legal advice supporting his opinion. It was never forthcoming. Ref

<https://www.rugbywa.asn.au/news/geoffrey-stooke-ar-aru-board-resignation-statement/>

On August 16 2017 John Edwards said:

The ARU lawyers advised Geoff to recluse himself from Board meetings on the basis that he had purchased Own the Force shares. Ref <http://twf.com.au/showthread.php?t=38664&page=44&p=437142&viewfull=1#post437142>

No shares have been issued in Own the Force, and in any case there would be no material benefit from owning those shares.

It is standard practice for a board member to recuse them self from voting if they have a material interest in the topic being voted on. But recusing from voting does not mean exclusion from discussion. Excluding a board member from all meetings and discussions is highly unusual, and is akin to excluding Senators from Parliament if a bill affecting their constituency was being debated. It is deeply suspicious that Mr Stooke was excluded from all board meetings, teleconferences and discussions. Especially when you consider that Mr Clyne has a long standing relationship with Victorian Rugby, and the former ARU COO Mr Rob Clarke was previously General Manager of the Rebels.

In his Judgement on RugbyWA's appeal against the Arbitration decision, Mr Justice Hammerschlag stated

... the parties do not have identical interests in the longevity of the Alliance Agreement ... Ref <https://www.caselaw.nsw.gov.au/decision/59acd9a4e4b074a7c6e1861f> section 65.

Indeed. And surely that indicates that, in His Honour's eyes, the ARU did not act in good faith in proposing and signing the Alliance Agreement.

Accordingly, the questions I would like to see answered are:

- When did the ARU board and/or its officers first begin discussing the removal of an Australian team (formally or informally) either within the ARU or with other parties?
- When did the ARU board and/or its officers discuss removing an Australian team with a Super Rugby broadcaster (either formally or informally) ?
- Did the ARU approach Foxtel (and/or other broadcasters or SANZAAR) with the proposal to cut a team and still retain the current revenue under the existing broadcast agreement?
- Did any of these discussions pre-date the signing of the Alliance Agreement?
- Who advised the ARU it could use the Alliance Agreement to remove the Western Force, and when was that advice received?
- Did the ARU request changes to the draft Alliance Agreement that put them in a position to use it to remove the Force?

- Did the ARU enter into the Alliance Agreement in good faith?
- Why was Mr Stooke excluded from ARU board discussions and presentations when the standard practice of recusing a board member involves recusing them from voting, not excluding them from the board?
- Who advised the ARU that Mr Stooke should be excluded from all Board meetings, teleconferences and discussions on the Super Rugby 'culling' process
- Was the exclusion of Mr Stooke designed to prevent RugbyWA from finding out the true nature of the ARU's so called "process" for excluding a team?
- Did the ARU refuse to accept input from Mr Rob Clarke on the basis he was previously the General Manager at the Rebels?
- Was the vote to remove the Western Force even valid given Mr Stooke's exclusion from the board?
- Was there deceptive and unconscionable conduct by directors and/or officers of an incorporated organisation (the ARU) towards a shareholder (RugbyWA)?
- Was there fraudulent misrepresentation by directors and/or officers of the ARU towards RugbyWA?
- Was there a conspiracy to commit fraud between the ARU and other parties?

I trust that the Inquiry will go a long way to answering these and other questions: questions that greatly disturb many of us in the Rugby Community in Western Australia. These are questions that should disturb anyone who truly believes in Rugby's values of Integrity, Passion, Solidarity, Discipline and Respect - <https://www.worldrugby.org/welcome-to-rugby/rugbys-values>

Again, thank you for the opportunity to make this submission to the Inquiry.