

Submission to the Senate inquiry

**CONFIDENTIAL SUBMISSION into the investigation of Rugby in Australia**

**This is submission lodged as name withheld in order to protect the reputation of people who may otherwise be punished.**

**The Australian Rugby Union have behaved unconscionably to its own members. The Senate is asked to review the actions of the ARU with regard to its own constitution.**

#### **D. the corporate governance arrangements of national based rugby union bodies**

I refer to the ARU's constitution:

##### **Issue 1:**

Clause 3.2 (d) of the ARUs constitution it states that the Company may expel or suspend a Voting Member by a resolution passed at a general meeting of the Company by unanimous vote of all Voting Members other than the Voting Member proposed to be expelled, being a resolution of which at least 21 days' notice has been given to all Voting Members.

There is no power therefore for the ARU to unilaterally suspend the Western Force as a Super Rugby Licensee simply because of an Alliance Agreement (dated 26 August 2016) since no agreement can take precedence over, supersede or supplant the ARUs own constitution.

##### **Issue 2:**

A Voting Member can only be expelled or suspended as per Clause 3.2 (d) or may elect to resign as per Clause 3.2 (e) "A Voting Member may resign as a member of the Company by at least 12 months' notice in writing given to the Company."

The Western Force has not given 12 months' notice in writing to the company informing it of its decision to resign as a Voting Member.

Clause 8.9 of the Alliance Agreement states that "the Participation Deed for Super Rugby and the High Performance Agreements are suspended and are of no force and effect", which is the basis for the ARU cutting the Western Force, however, the ARU is now in breach of its constitution since the Western Force was not expelled, suspended nor did it resign. The Alliance Agreement cannot replace, supersede or supplant the ARUs own constitution.

##### **Issue 3:**

Clause 3.3 (d) of the ARUs constitution states that "if at any time the Company owns or controls a Super Rugby Licensee, that Super Rugby Licensee will not be entitled to vote at general meetings of the Company."

The ARUs Constitution does not explain how the Company will come into a position whereby it owns or controls a Super Rugby Licensee. The ARU does not have the ability to hoodwink a Super Rugby Licensee into signing an Alliance Agreement that relinquishes their Voting Member rights as this would be in direct contravention of the ARU's own constitution.

The Alliance Agreement stated that the Western Force would retain its vote in any ARU general meetings however as this is in breach of Clause 3.3 of the ARU constitution which states clearly affords RugbyWA one vote but without a Super Rugby Licensee, no second vote to the Western Force in the recent EGM.

##### **Issue 4:**

Clause 5.9 of the ARUs Constitution codifies the Powers and duties of directors:

"ARU Constitution Clause 5.9 Powers and duties of directors

- a. The directors are responsible for managing the business of the Company and may exercise to the exclusion of the Company in general meeting all power of the Company which are not required, by the Corporations Act or by this Constitution, to be exercised by the Company in general meeting.
- b. Without limiting the generality of rule 5.9a, the directors may exercise all the powers of the Company to borrow or otherwise raise money, to charge any property or business of the Company and to issue debentures or give any other security for a debt, liability obligation of the Company or of any other person.
- c. The directors may determine how cheques, promissory notes, bankers drafts, bills of exchange or other negotiable instruments must be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by or on behalf of the Company.
- d. The directors may:
  - i. Appoint or employ any person to be an officer, agent or attorney of the Company for such purposes with such powers, discretions and duties (including powers, discretions and duties vested in or exercisable by the directors), for such period and upon such conditions as they think fit;
  - ii. Authorize an officer, agent or attorney to delegate all or any of the powers, discretions and duties vested in the officer, agent or attorney; and

- iii. Subject to any contract between the Company and the relevant officer, agent or attorney, remove, or dismiss any officer, agent or attorney of the Company at any time, with or without cause.
- e. A power of attorney may contain such provisions for the protection and convenience of the attorney or persons dealing with the attorney as the directors think fit."

The ability of the ARU to unilaterally dispose of member assets does not exist. The ARU is not able to dispose of the Western Force IP or related assets as covered by the Alliance Agreement yet, having bought the Western Force IP and all professional assets of the team including the Super Rugby Licence it did not give it any value in its annual accounts for year ended 2016.

**Issue 5:**

In the 2016 ARU annual accounts, under notes to the accounts there is an obligation to report material post balance date events yet no mention is made of the ARUs intention to discontinue one fifth of its Super Rugby Licensees.

Item 7 in the Directors' Report of the ARU Annual accounts is titled "Events subsequent to reporting date" - it states: "In the interval between the end of the financial year and the date of this 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."

On the 10 February 2017 the ARU Board resolved to reduce Australia's upper Rugby representation from five to four teams. On the 10 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 as material. The definition of material would mean: would it impact decisions by users of that information? The answer must surely be yes, it is of material nature and should have been reported.

**Issue 6:**

In the Directors' Report of ARU Financial Statements dated 22 March 2017 there is Note 6 "Significant changes in the state of affairs" which states: "In August 2016, the ARU entered into an Alliance Agreement with WARU whereby the commercial operations and professional rugby program of the Western Force Super Rugby team were integrated into the operations of ARU."

The Directors have noted the Alliance Agreement as being a significant change in the state of affairs however they have not noted that the closure of the Western Force Super Rugby team as at the end of the July 2017 season would be a significant change in the state of affairs. Surely there is an inconsistency in the reporting of significant changes in the state of affairs.