

# TRANS-TASMAN SPORTING LEAGUES: GOVERNANCE AND INTEGRATION

ELIZABETH TOOMEY\*

## I. INTRODUCTION

The surfacing of a number of trans-Tasman professional sports leagues in recent years reflects a form of regional integration and identity. This paper examines the early stages of this development and explores the changing nature of the leagues' governance that should help strengthen a combined sporting identity.

There are two models of this trans-Tasman relationship.<sup>1</sup> The first comprises new "start-up" leagues that comprise substantial numbers of teams from both countries and, in the case of rugby union, the regional integration is expanded to include South Africa and Argentina. This model demonstrates effective regional integration. The second, which involves a New Zealand team being admitted into essentially an Australian competition, has had a less clear path to follow. All three leagues in this cluster have struggled with outdated governance structures that have failed to embrace a professional management environment in which sponsors, governments and media organisations are key players. This paper examines their governance struggles from which have emerged significant improvements. A previously stifled regional identity may now blossom with the development of viable sporting cross-border competitions. This development depends on the sporting corporate sector working more closely and strategically and on executive teams being the main initiators of strategy and change.<sup>2</sup>

## II. EFFECTIVE GOVERNANCE

Responsibilities and relationships are often identified as the two critical components of an effective governance structure. Corporate governance has been defined as:<sup>3</sup>

\* Professor, School of Law, University of Canterbury, Christchurch, New Zealand. The author acknowledges the research contribution of J Goddard and the following students in the School of Law, University of Canterbury undergraduate programme: C Bell, K Lydiard, S Leyser, N Phillips and S Inder.

1 See H Opie and E Toomey "Trans-Tasman Sport and Law – Some Observations" (2010) 16 *Canta LR* 155 at 158.

2 See Independent Sport Panel *The Future of Sport in Australia* (2009) ["The Crawford Report"].

3 Organisation for Economic Co-operation and Development *OECD Principles of Corporate Governance* (OECD Publications Service, Paris, 2004).

[A] set of relationships between a company's management, its board, its shareholders and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring the performance are determined.

Traditional corporate governance schemes have long being recognised as insufficient models for sporting organisations.<sup>4</sup> Sporting teams in a league competition have discrete characteristics that challenge the normal regimes. Two features have been identified as particularly significant: interdependence between sporting teams and the phenomenon of “uncertainty of outcome.”<sup>5</sup>

The interdependence between the teams arises from a need for “co-ordination.”<sup>6</sup>

In other industries such co-ordination is generally seen as anathema as it would be viewed as anti-competitive. Without coordination, professional sport competition would not occur. It is also clear that one team cannot obtain revenue without another team to play with. The financial viability of a sports team is thus dependent on the success of other sports teams.

The “outcome of uncertainty” concept is based on the premise that an evenly-balanced on-field competition leads to consumer demand and team profits.<sup>7</sup>

The principles for this specialised type of governance are perhaps best illustrated by the Australian Sports Commission *Sports Governance Principles* released in 2012.<sup>8</sup> Drawing from its own report in 2007,<sup>9</sup> it recognises that effective sports governance:<sup>10</sup>

4 See, for instance, H Dietl, E Franck, T Hasan and M Land “Governance of Professional Sports Leagues – Cooperatives versus Contracts” *International Review of Law and Economics* 29 (2009) 127; J Amis and T Slack “The Size-Structure Relationship in Voluntary Sports Organisations” (1996) 10 *Journal of Sport Management* 76; L Kikulis “Continuity and Change in Governance and Decision Making in National Sport Organisations: Institutional Explanations” (2000) 14 *Journal of Sport Management* 293; L Ferkins, D Shilbury and G McDonald “The Role of the Board in Building Strategic Capability: Towards an Integrated Model of Sport Governance Research” (2005) 8 *Sport Management Review* 195; F de Zwart and G Gilligan “Comparative Corporate Governance Schemes and their Relevance for the Sporting Sector” (Monash University, Working Paper No 16); L Trenberth, C Collins (eds) *Sport Management in New Zealand* (Dunmore Press Limited, Palmerston North, 1994).

5 See S Farquhar, S Machold and P Ahmed “Governance and Football: An Examination of the Relevance of Corporate Governance Regulations for the Sports Sector” (2005) 1 *International Journal Business Governance and Ethics* 329 at 337, as referred to in F de Zwart and G Gilligan, above n 4, at 63-4.

6 S Farquhar, S Machold and P Ahmed, above n 5, at 337.

7 For a discussion of the concept of “uncertainty of outcome” see E Toomey “Watchdogs Adapt their Game” (2007) 26 *University of Queensland Law Journal* 117 at 131-133.

8 Australian Sports Commission *Sports Governance Principles* (March 2012).

9 Australian Sports Commission *Governance Principles: A Good Practice Guide for Sporting Organisations* (2007).

10 Australian Sports Commission, above n 8, at 2.

... requires leadership, integrity and good judgment. Additionally, effective governance will ensure more effective decision-making, with the organisation demonstrating transparency, accountability and responsibility in the activities undertaken and resources expended.

It notes that poor governance not only has a significant impact on the performance of sporting organisations but also undermines confidence in the sports industry as a whole. Causes of poor governance include conflicts of interest, failure to manage risk, inadequate or inappropriate financial controls, and generally poor internal business systems and reporting.

The Report's guidelines address three key issues:

- i. how an organisation develops strategic goals and direction;
- ii. how the board of an organisation monitors the performance of the organisation to ensure it achieves these strategic goals, has effective systems in place and complies with its legal and regulatory obligations; and
- iii. how to ensure that the board acts in the best interests of the members.

Six major principles are identified as necessary to strengthen structures that support good leadership and decision-making and to ensure sound and effective governance: board composition, roles and powers; board processes; governance systems; board reporting and performance; stakeholder relationship and reporting; and ethical and responsible decision-making.

Against this background, this article examines how the five leagues have been, and are now, performing. It becomes clear that full integration of the trans-Tasman league competitions will only occur with improved governance.

### III. THE FIRST MODEL

The new "start-up" leagues comprise the ANZ Netball Championship, and Super 15 Rugby and the Rugby Championship. Perhaps the best indicator of their successful governance structure is captured in the following comment made by the Australian Independent Sport Panel in 2009:<sup>11</sup>

The development of viable domestic and international competitions for sport can produce marketable content. The Panel is of the view that NSOs, government and the corporate sector must work more closely and strategically to 'think outside the box' in developing viable sporting competitions. The [then] Super 14 is an obvious example of a competition that has succeeded despite major jurisdictional and structural issues. With this example in mind could other sports develop viable cross-border competitions?

11 The Crawford Report, above n 2, at ch 2.4, 106.

*A. ANZ Netball Championship  
(Australia – Five Teams; New Zealand – Five Teams)*

### 1. Trans-Tasman Netball League Limited

The ANZ Championship was launched in 2008 with ten teams (five from Australia<sup>12</sup> and five from New Zealand<sup>13</sup>). It succeeded two national leagues: Australia Commonwealth Bank Trophy (1997-2007) and New Zealand's National Bank Cup (1998-2007). The competition, the first semi-professional netball competition in Australasia, is owned by Trans-Tasman Netball League Limited (TTNL), a company that is a joint venture of Netball Australia and Netball New Zealand.<sup>14</sup> Its two primary shareholders are the two national sporting organisations: Netball Australia and Netball New Zealand.<sup>15</sup> TTNL is a company registered in New Zealand under the Companies Act 1993. It is a special purpose company established solely for the purpose of running the competition.

The Board of Directors for TTNL comprises six members: two directors appointed by Netball Australia, two from Netball New Zealand and two independent directors, one from each country.<sup>16</sup>

The power sharing arrangement in this joint venture is split evenly between the two national sporting organisations and mirrors the make-up of the teams (five from each country). Any alteration of the competition in any material way effectively requires the assent of both parties. Therefore, any plans to add or remove teams from the competition require joint agreement.

The Chief Executive is responsible for the practical performance of the competition and runs the day to day affairs of the company.

### 2. Its Success

The ANZ Netball Championship's success is indisputable. The league boasts the world's best netballers and the games provide "a feast of trans-Tasman rivalry".<sup>17</sup>

Behind this success is an exemplary governance model. The separation of the organisation of a sporting league from one or more governing bodies removes possible conflicts between the objectives held by multiple stakeholders

12 Melbourne Vixens, Adelaide Thunderbirds, Queensland Firebirds, New South Wales Swifts, West Coast Fever.

13 Northern Mystics, Waikato/Bay of Plenty Magic, Central Pulse, Southern Steel, Canterbury Tactix.

14 ANZ Championship "History" <[www.anz-championship.com](http://www.anz-championship.com)>.

15 Individual Australian franchises are managed by state netballing governing bodies and individual New Zealand franchises are managed by regional netballing bodies, both of which report to their governing bodies. However, instead of a governing body running the trans-Tasman competition, TTNL was formed.

16 ANZ Championship "Board" <[www.anz-championship.com](http://www.anz-championship.com)>.

17 <[www.anz-championship.com](http://www.anz-championship.com)>.

of the organisation. The model leaves no room for “confused and confusing inter-relationships characterised by a marked lack of integration and ... lack of mutual trust”.<sup>18</sup>

*B. Super 15 Rugby; The Rugby Championship  
(Australia – Five Teams; New Zealand – Five Teams;  
South Africa – Five Teams; Argentina )*

## 1. SANZAR

Following the international transformation of rugby to professionalism in 1995, the Australian, New Zealand and South African rugby unions formed SANZAR (South Africa, New Zealand and Australian Rugby). This is an unincorporated joint venture between the administrators of the three most prominent rugby playing nations in the southern hemisphere.<sup>19</sup>

Each of the unions has its own corporate structure. The Australian Rugby Union (ARU) is run as a company (Australia Rugby Union Limited); the South African Rugby Union (SARU) is an incorporated association and is governed by an Executive Council; and the New Zealand Rugby Union is an incorporated society that comprises its members, a nine-person board, its patron and officers, and its executive.

The formation of SANZAR was prompted by a perceived threat that rugby players would be attracted by the large salaries that were being offered by the newly formed Super League rugby league competition founded by News Corporation.<sup>20</sup> SANZAR formulated a “Perfect Rugby Product” from which it could in turn sell the lucrative broadcasting rights that would fund player contracts and transform rugby union into a professional sport.<sup>21</sup> The model for this product was, at the provincial level, a “Super 12” competition: five sides from New Zealand, four from South Africa and three from Australia, and after the completion of the Super 12, an international “Tri-Nations” test series between the three-member countries, on a home-and-away basis.<sup>22</sup> News Corporation bought the broadcasting rights to the new competitions and a new era of rugby union began. In August 1995, the International

18 A comment from a stakeholder in the Independent Soccer Review “Report of the Independent Soccer Review Committee into the Structure, Governance and Management of Soccer in Australia” (Chairman: David Crawford), April 2003, at 52.

19 For a discussion, see David Rutherford “Employer and Employee in Professional Rugby: One Team or Two Sides” in E Toomey (ed) *Keeping the Score: Essays in Law and Sport* (Centre of Commercial and Corporate Law, School of Law, University of Canterbury, Christchurch, 2005) at 136.

20 See comments below (Australian Rugby League Commission). See also B Howitt “SANZAR Saga: Ten Years of Super 12 and Tri-Nations Rugby” (2005); E Toomey and C Fife *International Encyclopaedia of Laws: Sports Law* (New Zealand) (2nd ed, Kluwer Law International, The Hague, 2012) at 93.

21 P FitzSimons *The Rugby War: ‘The Rugby Story of the Decade’* (2nd ed, Harper Sports, Sydney, 2003).

22 At 29-30.

Rugby Board (IRB) declared the game professional, which ended a “century of stringent amateurism” and allowed players to earn a living from playing rugby.<sup>23</sup>

The Super 12 subsequently became the Super 14 and, in 2011, the Super 15.<sup>24</sup> The Tri-Nations was revamped to include further rounds and in 2011, it was announced that Argentina would join SANZAR in a new southern hemisphere Rugby Championship from 2012.<sup>25</sup>

SANZAR controls more than the actual running of the competition. Among other roles, it administers the rules of the competition, schedules the play and conducts the judiciary hearings.

Super 15 and Tri-Nations disciplinary matters are dealt with by three-member judicial committees, comprising a chairman, an eminent former player and either an eminent former rugby administrator or a lawyer with rugby judicial proceedings experience.<sup>26</sup>

Super 15 committees are set up in the most convenient area and are chaired by someone from the host country. Tri-Nations matters are set up at the match venue and are chaired by someone from the national union not involved in the match, with the remaining members appointed by the host country.<sup>27</sup>

## 2. Its Success

Again, the Super Rugby model separates the organisation of the league from the three contributing entities. There is no doubt that the governance works well and this is reflected in the health of the league. The SANZAR nations retain the top three world positions,<sup>28</sup> and the competition continues to expand. In 2012, SANZAR unveiled its new product, The Rugby Championship. This competition has been extended to include Argentina, thus ending 16 years of Tri-Nations competition.

## IV. THE SECOND MODEL

The cluster of three trans-Tasman sporting leagues where a singular New Zealand team is admitted into an Australian competition presents a much less integrated picture. Governance struggles in all three have hindered progress and multiple layers of governance and management have compromised commercial capability. This part of the paper explores the struggles and

23 B Howitt, above n 20, at 22; E Toomey and C Fife, above n 20, at 93-94.

24 Australia (Brisbane Reds, Sydney Waratahs, Melbourne Rebels, Canberra Brumbies, Perth Force); New Zealand (Auckland Blues, Waikato Chiefs, Wellington Hurricanes, Canterbury Crusaders, Dunedin Highlanders); South Africa (Cape Town Stormers, Johannesburg Lions, Pretoria Bulls, Durban Sarks, Cheetahs).

25 E Toomey and C Fife, above n 20, at 94. See SANZAR “About SANZAR” <[www.sanzarrugby.com](http://www.sanzarrugby.com)>.

26 E Toomey and C Fife, above n 20, at 94; M Haggie “The Judicial Disciplinary Proceedings of the New Zealand Rugby Football Union” (1999) 29 VUWLR 317 at 355.

27 E Toomey and C Fife, above n 20, at 94; M Haggie, above n 26.

28 <[www.sanzarrugby.com](http://www.sanzarrugby.com)> reported on 28 August 2012.

the leagues' efforts to change out-dated governance styles. Some of those changes are as recent as 2012. The advent of commissions and more effective governance structures should result in better regional integration in the years to come.

*A. National Basketball League  
(Australia – Seven Teams; New Zealand – One Team)*

Basketball Australia (BA) is the governing and controlling body for the sport of basketball in Australia. Its members are the state/territory basketball associations and, from 1 July 2009, the member clubs of the National Basketball League. BA runs the national leagues, national teams and the national junior championships.<sup>29</sup>

The National Basketball League (NBL), first established in 1979, is considered one of the premier men's basketball leagues in the world. It comprises eight teams: seven from Australia<sup>30</sup> and one from New Zealand.<sup>31</sup>

### **1. Independent Review: Structure and Governance of Basketball in Australia 2007**

At the time of the 2007 Review of the Structure and Governance of Basketball, the Report of which was released in November 2007,<sup>32</sup> the NBL was run by NBL Management Limited, a company limited by guarantee. NBL was granted a licence by BA to conduct the national elite men's competition. Basketball Australia and all the NBL clubs were members of NBL Management Limited with a representative from each NBL club on the Board. It was clear that NBL had poor links with BA membership and the broader basketball community.

To address the broad concerns for the sport that included the dissatisfaction with the interrelationship between the NBL and BA, the task of the Steering Committee was to assess the structure, governance and management of basketball taking into account governance factors such as the constitutional arrangements, board structures, policies, practices and behaviours; organisational structure and strategic management policies and practices; and structural and contractual arrangements.

### **2. Stakeholders' Criticisms**

Stakeholders were very critical of the structure at the time. They considered that:<sup>33</sup>

29 <www.basketball.net.au>.

30 The Adelaide 36ers, Cairns Taipans, Sydney Kings, Melbourne Tigers, Perth Wildcats, Townsville Crocodiles and Wollongong Hawks.

31 New Zealand Breakers.

32 Basketball Australia, National Basketball League and Australian Sports Commission "Report of the Steering Committee; Structure and Governance Review of Basketball in Australia" (2007) <www.ausport.gov.au>.

33 At 5.

- i. the current structures for BA and the NBL were ineffective in delivering and building basketball in Australia;
- ii. the sport lacked strategic direction and focus;
- iii. there was no shared vision;
- iv. there was fragmentation;
- v. there was a lack of consistency and trust in delivering the sport;
- vi. the sport was significantly undercapitalised; and
- vii. the existing relationship between BA, the NBL and the NBL clubs, through the *NBL Participants Agreement*, was set in perpetuity with no provision for review and little accountability, and was subject to the control of vested interests, the club owners.

### 3. Stakeholders' Vision

The majority of stakeholders favoured the creation of a new single integrated national body for the sport. The perceived benefits were:<sup>34</sup>

- i. one voice for the sport;
- ii. one brand for the sport;
- iii. better links between BA, the state and territory associations and the NBL clubs thus creating an opportunity to increase the links to grassroots and the broader relevance of the sport;
- iv. improved pathways for athletes, coaches and officials; and
- v. a “last-ditch” chance (integration) for the health of the sport.

The main concerns of the dissenting minority related to the financial risks of integration, the differing objectives of each body and the lack of trust between the NBL and BA.

Nonetheless, all stakeholders considered change was necessary.

### 4. The Steering Committee's Findings and Recommendations

The Steering Committee considered that full integration was the best solution for the sport. It would result in one vision for the sport, one board driving the strategy and one management structure implementing that strategy.

The Committee recommended that this entity be a company limited by guarantee under the Corporations Act 2001 (Cth) and governed by a board consisting of seven independent directors, five of whom would be elected and two who would be appointed. They would hold four year terms, with “half board” elections held biennially in odd years. The Chairperson was to be elected from within the Board by the directors.<sup>35</sup> Membership of the new body would be made up of the current member state and territory associations and

34 At 5.

35 At 6.



the NBL clubs. Each NBL club would become a company member through a franchise agreement,<sup>36</sup> and would contribute a “membership fee” to the company, in addition to its usual annual NBL franchise fee.<sup>37</sup>

The Committee recommended the establishment of a number of commissions of the company,<sup>38</sup> one being an NBL Commission.<sup>39</sup> The Committee also recommended certain management characteristics under the new integrated structure.<sup>40</sup>

## **5. What Happened?**

From 1 July 2009, Basketball Australia adopted a new governance structure. The single national governing body for the sport is Basketball Australia through its registered company, Basketball Australia Limited. Its Board heads the governance structure. Below this entity are two sub-committees: Board Finance & Audit, and Board Executive Remuneration. The third tier comprises five commissions, one of which is the NBL Commission.<sup>41</sup> The overall role of the Commissions is to provide support, guidance and direction for the delivery of the programmes by the local and state associations.

## **6. The NBL Commission**

The NBL Commission was established to govern the NBL. Its major roles are to:<sup>42</sup>

- i. manage the NBL as a strategic business unit of BA;
- ii. determine the appropriate financial criteria and parameters for the clubs and league to establish the sustainable financial model that provides for secure growth in future seasons;
- iii. define the appropriate timing for each NBL season;
- iv. determine the appropriate geographic coverage, size and composition of the NBL, criteria for expansion, and criteria for club inclusion;
- v. ensure that the NBL is appropriately linked to the high performance pathway for the development of players, coaches and officials;
- vi. ensure that the NBL provides an appropriate opportunity for players, coaches and officials to perform to their full potential at the international level; and
- vii. review the management effectiveness of the commercial management and operations support provided to the league.

36 At 7.

37 At 7.

38 At 7.

39 At 9.

40 At 8.

41 The other four Commissions comprise: Awards and Honours, Competition, High Performance and Association.

42 Basketball Australia “Roles and Responsibilities of Basketball Australia Commissions” (2009) <[www.basketball.net.au](http://www.basketball.net.au)> at 2-3.

The NBL Commission comprises seven members: two BA Board members and five other members. Four of the members are nominated by the NBL club owners. The NBL Commission members are appointed by the BA Board and generally serve for two year terms. No appointed member can serve for more than two consecutive terms. The BA Chief Executive Officer is a full member of the Commission.<sup>43</sup>

## 7. The NBL Commission in 2012

It appears that the NBL Commission is working successfully. In August 2012, a Sydney Kings' shareholder and director, Mr Stephen Dunn, was appointed to the seven-member Commission. His comments suggest a healthy organisation that has strived to implement the Review's recommendations. After explaining the role of the NBL he notes:<sup>44</sup>

Behind the scenes, the Commission is also the conduit between the many stakeholders involved in, or with an interest in, basketball in Australia. In this respect, the value of having three representatives of the NBL clubs cannot be underestimated. Being able to bring a practical grass-roots opinion to the deliberations of the Commission and, in reverse, to understand the workings of the Commission and relating those back to the clubs when tough decisions are made, is important to develop a transparent and trusted communication channel ...

The recent announcement that all non TV games will be broadcast live across digital platforms is a huge coup for the league, and the improved Channel 10/One HD transmission should expose basketball to a much wider audience.

### *B. National Rugby League (Australia – 15 Teams; New Zealand – One Team)*

#### 1. Australian Rugby League Commission

On 10 February 2012, the Australian Rugby League Commission (ARL Commission) was established and charged with taking control of all aspects of the game of rugby league. It replaced the partnership arrangement between the Australian Rugby League and News Limited, the National Rugby League (NRL), formed in 1998 to administer the national competition. In doing so, it replaced the existing Partnership Committee and the existing Australian Rugby League (ARL) and NRL Boards.

The 2012 competition comprises 16 teams, 15 from Australia<sup>45</sup> and one from New Zealand.<sup>46</sup>

43 At 2.

44 "Sydney Kings shareholder and director, Mr Stephen Dunn, appointed to the NBL Commission" <www.nbl.au>.

45 Melbourne Storm, Canberra Raiders, Newcastle Knights, Gold Coast Titans, Brisbane Broncos, North Queensland Cowboys, Manly Sea Eagles, South Sydney Rabbitohs, Canterbury Bulldogs, St George Illawarra Dragons, Wests Tigers, Penrith Panthers, Parramatta Eels, Sydney Roosters, Cronulla Sharks.

46 New Zealand Warriors (Auckland).

## 2. History – Media Chaos

The somewhat chaotic history behind the formation of the NRL deserves mention. In late 1994 – 1995 the Australian Rugby Football League entered into detailed negotiations with News Limited in a desperate attempt to prevent News Limited setting up a rival competition. The negotiations were unsuccessful, and News Limited began the establishment of its “Super League” competition independent of the Australian Rugby Football League. Thus began a hostile period for the game and a troubled fight over TV rights. In its establishment of its new competition, News Limited had to overcome ARL loyalty agreements that bound all clubs to the ARL for five years. It argued that the agreements were void and commenced proceedings, alleging that the loyalty agreements breached various sections of the Trade Practices Act 1974 (Cth): ss 45D and 4D (collective boycotts); s 45 (anti-competitive arrangements) and s 46 (misuse of market power).

At first instance,<sup>47</sup> Judge Burchett held that the Trade Practices Act 1974 had no relevance to sporting competition. His Honour held that the ARL was not primarily in the business of making a profit; rather, its essential motive was to promote the game of rugby. It was a type of joint venture, but one that was essentially non-commercial in nature. All the constituent clubs held their assets and all their player contracts in trust for the ARL, the joint venture of which all clubs were part. In his opinion, the ARL was not looking for market power as the targeted markets were wide-ranging: rugby league, rugby union, Australian rules football and basketball.

The Full Federal Court disagreed.<sup>48</sup> It found that the clubs were engaged in trade and commerce – they hired grounds, charged match entry fees, sold sponsorships, and shared revenue. The national premiership competition itself was an activity in trade and commerce. Thus, in the Court’s view, all commercial laws applied to the ARL and its loyalty agreements were exclusionary provisions that breached the Trade Practices Act 1974.

News Limited won its appeal and its Super League competition was introduced in March 1997. Both the ARL and Super League competitions ran parallel to each other that year. The two competitions did little to serve the best interests of the game. Less than a year later, in a last-resort measure – and without the courts – News Limited and ARL met each other around the negotiating table and concluded an agreement to work together for the benefit of the game. This partnership ended on 9 February 2012.

## 3. The Commission’s Structure

The ARL Commission is the existing ARL corporate entity with a new constitution and regulatory framework.<sup>49</sup> All NRL clubs and the New South Wales and Queensland Rugby leagues are members of the Commission. Each

47 *News Limited v Australian Rugby Football League* (1996) ATPR 41-466 (Federal Court of Australia, Burchett J at trial).

48 *News Ltd v Australian Rugby Football League* (1996) ATPR 41-520 (Full Federal Court of Australia: Lockhart, von Doussa and Sackville JJ).

49 <[www.rugbyleague.com.au](http://www.rugbyleague.com.au)>.

club signs a seven-year participation agreement which allows it to compete in the Telstra premiership. The inaugural ARL Commissioners were agreed by representatives of the NRL partnership, the leagues and the clubs. Future Commissioners will be appointed by the Commission itself.

The Commissioners are appointed into different groups and, initially, for differing terms. Each Commissioner must, at a nominated time, resign and seek re-election at an Annual General Meeting.<sup>50</sup> Two commissioners are appointed into Group A and will resign immediately prior to the 2013 Annual General Meeting. Three other commissioners are appointed to Group B and will resign immediately prior to the 2014 Annual General Meeting. A further three commissioners are appointed into Group C and will resign immediately before the 2015 Annual General Meeting. In all groups, the directors may each stand for re-election at the Annual General Meeting that immediately succeeds their resignation.

#### **4. The Commission's Primary Objects**

The primary objects of the Commission are to:<sup>51</sup>

- i. be the single controlling body and administrator of the Game;
- ii. foster, develop, extend and provide adequate funding for the Game from the junior to elite levels and generally to act in the best interests of the Game;
- iii. liaise with and delegate appropriate functions to governing bodies of the Game in the States and Territories of Australia, including the NSWRL and QRL;
- iv. organise and conduct all State of origin and Australian representative Games;
- v. organise, conduct and foster the NRL Competition;
- vi. liaise with the Rugby League International Federation Limited and organisations controlling the Game in other countries in the fostering and control of the Game of Rugby League throughout the world;
- vii. promote and encourage either directly or indirectly the physical, cultural and intellectual welfare of young people in the community and, in particular, the Rugby League community; and
- viii. promote and encourage either directly or indirectly sport and recreation, particularly Rugby League football, in the interests of the social welfare of young persons.

#### **5. How is the Commission Faring?**

At the time of writing, the Commission has been in existence for a mere eight months and could be forgiven for simply "finding its feet." Nonetheless, it has not escaped early censure. Criticisms include the Commission's lack of

50 Ibid.

51 Ibid.

rugby league knowledge and lack of open communication, failure to inform openly, painstaking privacy and inability to deal with the troubling Gold Coast Titans. It can only be hoped that these are teething problems and the new governance structure flourishes.

*C. A-League  
(Australia – Nine Teams; New Zealand – One Team)*

The A League, officially known as the Hyundai A-League, is run by the Football Federation of Australia (FFA), an Australian company limited by guarantee. The FFA is soccer's governing body in Australia.<sup>52</sup> It is a member of Federation International de Football Association (FIFA) which is the international governing body for football. It was founded in 2004 following the collapse of the National Soccer League (NSL).

The FFA is governed by a Board including up to three directors appointed by the Board (including the Managing Director) and six directors elected by the members (including the Chairman).

The FFA has imposed a two-year ban period on anyone wanting to be elected as a FFA board director, who holds another position in soccer administration.<sup>53</sup> This is a direct result of the sport's previously troubled governance structure that culminated in the Report of the Independent Soccer Review Committee in 2003 described below.

The League comprises ten teams: nine in Australia<sup>54</sup> and one from New Zealand.<sup>55</sup>

### **1. Previous Governance Disasters: The Crawford Report 2003**

In April 2003, the Report of the Independent Soccer Review Committee into the Structure, Governance and Management of Soccer in Australia was released. It is generally referred to as the 2003 Crawford Report.<sup>56</sup>

The Report identified the need for major structural change at national and state levels. It noted its awareness that over the past two decades (before 2003) soccer in Australia had faced a series of crises. These included:<sup>57</sup>

- (a) severe financial problems (members' equity of Soccer Australia was a negative \$2.6 million at 30 June 2002);
- (b) reduced staffing levels;
- (c) political infighting;
- (d) lack of strategic direction and planning; and
- (e) mixed results on the field in the international arena.

52 Football Federation of Australia <www.footballaustralia.com.au>.

53 Ibid.

54 Adelaide United, Central Coast Mariners, Newcastle Jets, Sydney FC, Brisbane Roar, Perth Glory, Melbourne Victory, Melbourne Heart, Sydney Club.

55 Wellington Phoenix.

56 Independent Soccer Review "Report of the Independent Soccer Review Committee into the Structure, Governance and Management of Soccer in Australia" Chairman: David Crawford (April 2003).

57 At 1.

The Review addressed the existing governance, management and structure of soccer in Australia and concluded that it was “ineffective, [did] not work and [needed] changing”.<sup>58</sup> It recommended the implementation of changes that:<sup>59</sup>

- i. ensured that the governing bodies were independent and capable of acting in the best interests of the sport as a whole;
- ii. separated governance from day-to-day management by implementing an effective governance and management structure;
- iii. ensured that all stakeholders had the opportunity to be heard which would require a change of membership and voting structures at national and state levels; and
- iv. restructured the relationship between Soccer Australia and the National Soccer League (NSL).

## 2. Stakeholder Comments

In its quest for an improved system, the Committee conducted an extensive consultative process to assess the views of stakeholders and the public about the future of soccer in Australia. As it notes in its Report, these views provided an insight into the lack of confidence in the governance and management structure as it then stood. The following illustrations provide a snapshot of discontent:

I feel that the problems start and end with the administration of the game at the highest levels and filter down to a disgruntled general football community that is fast becoming apathetic. In other words, how do you grow a game if the followers are jaded and frustrated with a catalogue of embarrassing mismanagement and in-fighting? Certainly the general sporting public sees the game as endemically mismanaged at all levels and the media only reports and reinforces these negative aspects.<sup>60</sup>

All too often it has appeared to us that talent has been overwhelmed by people with ambitions and hidden agendas which have clouded the objective of being involved ... the only issue that matters is development of the code itself, not the personal ambitions of those involved.<sup>61</sup>

I am disheartened to see the constant undermining of the NSL by what I perceive as incompetent administration and poor management by Soccer Australia ... this is due in part to the unwieldy nature of Soccer Australia's structure and its constitution which allows politics to over-ride independent decisions relating to the NSL.<sup>62</sup>

Soccer Australia does not have a governance structure that works ... [rather it is] a series of independent fiefdoms ... at Soccer Australia level, the history has been characterised by a high level of politics and personality differences and almost complete lack of understanding of appropriate governance practices, massive confusion between directors and management roles and poor delivery to stakeholders both within and outside the sport.<sup>63</sup>

58 At 3.

59 Ibid.

60 At 47 (Richard Bennett).

61 At 47 (John Bonnet and Robin Poke).

62 At 48 (George Bramis).

63 At 52 (Nick Greiner).

### **3. Recommendations**

The Committee considered it fundamental for the administration of soccer in Australia to have a truly independent board that had the responsibility to develop policies and strategies for the sport's future and to contribute to the international issues through FIFA. This would necessitate a complete redrawing of the existing constitution and the appointment of a new Board.

It listed 53 recommendations.<sup>64</sup> Among these were the following:

- i. Soccer Australia to be governed by a board of six elected independent directors;
- ii. Directors to be appointed for four-year terms and, subject to re-election, be eligible to serve for a maximum of eight consecutive years (a maximum of two four-year terms) and then be ineligible for re-election for a minimum of one half-term (approximately two years);
- iii. A director who is not elected to the position of President for more than one term within the eligible period of two consecutive terms may be eligible for election for a third consecutive term as President only;
- iv. The establishment of a clearer separation of the roles of boards and management;
- v. Soccer Australia to establish the NSL as a separate entity operating under a licence from Soccer Australia with a board comprised of independent directors elected by participation NSL clubs and with separate (from Soccer Australia); and
- vi. The implementation of an interim board of Soccer Australia for a period expiring with the election in 2005 of a Board under the new constitution of Soccer Australia.

### **4. The NSL Task Force Report**

The release of the 2003 Crawford Report resulted in the creation in the same year of a Task Force to consider a framework for a new national competition. It was to comprise eight teams: seven from Australia and one from New Zealand. In 2004 the Australian Soccer Association changed its name to the FFA.

On 1 November 2004 the eight successful bidders were named (including New Zealand Knights, now replaced by Wellington Phoenix). The major sponsor was Hyundai, after whom the competition was named. The competition started in August 2005.

### **5. 2012: How Successful?**

The inaugural season of the A-League was very successful and the negotiation of a new revised seven-year deal with broadcast partner Fox Sports helped consolidate the competition's financial stability. The competition was engaging a significant section of the Australian sporting community.

64 At 9-12.

However, it has been noted that a recent breakdown in relations between FFA and two of its highest profile and powerful club owners, mining magnates Clive Palmer and Nathan Tinkler, may threaten the competition's corporate and media profile.<sup>65</sup>

These circumstances are reminiscent of the circumstances that confronted its predecessor, the National Soccer League (NSL) and ultimately led to its demise.

... One of the central suggestions of the Crawford Report was to ensure the independence of the governing body of the league from the governing body of the game. Steps to remedy this current breakdown have been taken with the formation of the FFA Strategic Steering Committee which allows three owner representatives to sit on the committee which may assist in facilitating some changes the owners would like to see.

While other suggestions, such as spreading the competition to a national level and starting with a one-team-per-city policy have been followed, an independent league may have been the missing piece to avoid some of the NSL's problems.

## V. CONCLUSION

This paper investigates the two models of trans-Tasman professional sports leagues. The new "start-up" leagues, one of which does in fact reach beyond a pure trans-Tasman relationship, have very successful governance structures that incorporate the critical components of effective leadership and direction. With this base, the leagues are well-integrated within the region and their competitions are thriving. The three Australian leagues that incorporate a single New Zealand team display less regional integration and identity. They have all struggled with out-dated governance structures that have allowed mismanagement, in-fighting, politics and hidden agendas. In the last decade, these leagues have been subject to critical reviews that have resulted in dramatic changes to their governance structures. The introduction of commissions addresses a pivotal recommendation from the review committees. These changes should lead to more viable cross-border competitions.

65 James Skinner and Thilo Kunkel "Soccer in Australia: Is history repeating itself?" <[theconversation.edu.au](http://theconversation.edu.au)> (24 April 2012).