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# **ELITE ATHLETES' RIGHTS AND WELFARE**

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**5 NOVEMBER 2018**

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# 1. KEY FINDINGS

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1. The purpose of this review is to help drive informed future decision making, not to mandate or impose solutions on Sporting Organisations. It will be for Sporting Organisations themselves, together with their key stakeholders, to determine the actions that need to be taken arising from this review.
2. Each Sporting Organisation<sup>1</sup> should be making conscious decisions as to whether it can better address the issues relating to the rights and welfare of their Elite Athletes and, if so, how to go about this task. Whether Sporting Organisations like it or not, there is growing evidence of a problem arising in elite sport in New Zealand because of a lack of genuine focus on athlete rights and welfare. There is not yet a crisis but the time to act is now and the pre-requisite to acting is an open mind to the benefits of an alternative approach.
3. NSOs are primarily responsible for creating and maintaining a high performance environment for their Elite Athletes.<sup>2</sup> NSOs should be working to ensure their Elite Athletes' experience in their environments is a positive one, irrespective of on-field results. At the very least they have an obligation to ensure it is not a harmful one.
4. Sport NZ and HPSNZ need to take a leadership role in resourcing and advocating for the importance of the rights and the welfare of Elite Athletes, and the performance benefits that can derive from a greater focus on these areas. NSOs are accountable for the welfare of their Elite Athletes but Sport NZ and HPSNZ have a responsibility to ensure NSOs have the skills and capability to perform this role.
5. A focus on how Elite Athletes are treated and engaged by Sporting Organisations should not be seen as diminishing the athletes' own responsibility and accountability for how they train, compete and behave generally. Equally, the privilege of 'wearing the fern' cannot be a blanket justification for placing unreasonable or excessive demands on an Elite Athlete as a requirement of representing his or her country.

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<sup>1</sup> While NSOs have primary responsibility for their Elite Athletes, as set out in the review, other Sporting Organisations also have a responsibility through the provision of funding and other support or while those athletes are in their care.

<sup>2</sup> This statement applies to a greater or lesser extent to each NSO (and Paralympics NZ) and the Elite Athletes in their sport accepting that some Elite Athletes operate almost completely independently from their NSO in campaigns which they are primarily responsible for. Each NSO can and should take into account the differences in their sport's operating environments as part of their decision as to what further action, if any, is required arising out of this review.

6. Sporting Organisations need to have a clear purpose and vision derived after consultation with key stakeholders, including Elite Athletes. This will clarify what success looks like, which should be more than achieving binary performance outcomes.<sup>3</sup>
7. Athlete welfare and performance should be seen as mutually reinforcing, not in conflict with each other. It is not acceptable or necessary for a sport to achieve, or to set out to achieve, one at the expense of the other.
8. While each NSO will have its own unique culture that reflects the history and context of their sport, there appears to be no consistent approach or guiding principles in terms of implementing a high performance culture across New Zealand high performance environments. It is therefore hardly surprising that there are significant differences in the treatment of Elite Athletes and the experience they receive.
9. This review tries to identify the factors causing this disparity and what can be done to achieve a more consistent approach that will help NSOs provide for the rights and welfare of their Elite Athletes in a way that does not compromise on-field performance. This should be a realistic goal in a country that sees itself as being a nimble, agile and cohesive sporting nation that respects and values its people.
10. Based on what I was told, I believe the opportunity exists for the New Zealand high performance system to look to take performance success to another level by having a consistent and greater focus on the development of Elite Athletes rather than just performance outcomes.
11. Many NSOs assert that they adopt an athlete centred approach to high performance and acknowledge that this is best practice. However, the evidence I have seen suggests that even these sports are still not yet at the point where they consistently put an athlete's development and wellbeing at the centre of what they do.
12. In essence, by developing the person, you are improving the athlete. Under this approach, performance will always be a key measure, but a performance outcome will not be the sole focus to the exclusion of the other needs of the athlete as a person.

## **Rights and Welfare**

13. Sporting Organisations need to engage with their Elite Athletes on an ongoing basis on issues relating to their rights and welfare. How this is best done can be determined on a sport by sport basis taking into account the nature and resources of that sport.

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<sup>3</sup> This is an important step because it provides a platform to ensure participants then act and behave in ways that will achieve that vision and purpose. This is discussed further in section 10 of the review.

14. While there is no one, or right, way to engage with Elite Athletes, the reality is that NSOs/HPSNZ are the primary funding and only selection options for Elite Athletes who want to represent their country at pinnacle events.<sup>4</sup> The dependency in terms of funding and selection creates an immediate and obvious power imbalance between Sporting Organisations on the one hand and Elite Athletes on the other. This power imbalance, and the relative age and experience of the Elite athletes concerned, needs to be taken into account when determining how Sporting Organisations can effectively and appropriately engage with Elite Athletes.
15. Undertaking this exercise will require more than assessing Elite Athletes' 'legal' rights and implementing related policies and procedures. The biggest determinant of Elite Athlete wellbeing is the environment they operate in and the experience they have in that environment. That experience is in turn determined by the leadership and culture of the environment. These are the critical aspects of the high performance environment that Sporting Organisations need to ensure are properly addressed.
16. Elite Athletes' rights are discussed in section 6 of the review. My view is that, at a minimum, sports need to cater for the following core rights:
  - the right to train and compete in a safe environment (includes physical and psychological safety);
  - the right to be treated with respect and dignity (includes protection against discrimination and harassment, a right to equal opportunity);
  - the right to due process and to be treated fairly (includes a transparent and merit-based selection process and a forum and process for resolving disputes);
  - the right to organise and be heard (having a voice and access to external and independent representation/support);
  - the right to develop as an athlete and person; and
  - the right to property (includes athletes' privacy and intellectual property rights).
17. The key issues for Sporting Organisations to address is what these rights mean in practice and how they are able to be exercised by the athletes concerned. The more a Sporting Organisation fails to properly implement the required measures to hear and respond to the rights and legitimate interests of Elite Athletes, the greater the prospect that those Elite Athletes will take steps to exercise the rights and bargaining power they have.
18. The most challenging aspect for Sporting Organisations to accept is likely to be in relation to rights asserted by Elite Athletes to organise themselves and/or to work in partnership with the Sporting Organisation, given a true partnership model is based on shared ownership, shared responsibilities and an agreed allocation of income.

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<sup>4</sup> There are exceptions; for example, in both athletics and equestrian, competitors can be invited to compete as individuals in international events without any involvement of, or sanctioning by, their NSO.

19. Having an effective voice is more than simply having a mechanism or process for seeking the views of Elite Athletes on selected issues. It is about establishing a two-way communication process. Elite Athletes need multiple forums and mechanisms within their environment to contribute, raise issues or be heard on issues that affect them. Equally Board, management and team personnel need to be able to use those same mechanisms to communicate and engage with their athletes.
20. Elite Athlete welfare refers to athlete wellbeing, on and off the field. The key influences on Elite Athlete welfare include training load, competition requirements, funding, health and safety, support, education, and life after and outside sport. What these components entail is set out in section 7 of this review but the most significant contributor to athlete welfare is the way Elite Athletes are engaged with across every level of the organisation, that is, the culture they operate within.
21. Disabled athletes have the same rights and welfare needs as able bodied athletes but have additional requirements that need to be met depending on the nature of their disability. NSOs need to be equipped and resourced to provide high performance environments for these athletes, particularly those NSOs not currently doing so given Paralympics NZ's plans to transition responsibility for para athletes to the relevant NSO by 2020.
22. Elite Athletes need to be able to access independent advice and support when they need it including in relation to making the most of their profile and maximising their commercial opportunities.
23. Any Elite Athlete representative body needs to have a clear mandate from the Elite Athletes within that sport and the resources it needs to perform its role on an independent and stand-alone basis. The body needs to be owned, driven and wanted by the athletes themselves. It cannot be imposed on them.

## **NSOs**

24. While it may not be the ultimate rule maker in its sport, an NSO as the custodian of their game in New Zealand has legal, moral and ethical duties to take all reasonably practical measures to reduce the risk of injury for participants (including Elite Athletes) and/or to educate and inform participants of the risks of receiving such an injury. An NSO's duty of care extends to both the physical and mental health of participants including Elite Athletes.
25. NSOs need to create and maintain high performance environments where Elite Athletes have the ability and the opportunity to speak up without fear of recrimination or repercussion. This is not universally the case currently.

26. NSOs need to identify and address Elite Athlete issues or concerns early so that they do not fester and so that inappropriate behaviours are not accepted or normalised in that environment. Mediation should be the first option for resolving disputes (other than anti-doping disputes) where an Elite Athlete and an NSO cannot agree a satisfactory outcome.
27. Elite Athletes contracted by their NSO are either employees or contractors.<sup>5</sup> While the distinction can be important, NSOs should not, in my view, simply rely on the fact that the agreements with most of their Elite Athletes state they are contractors as justification for treating them in a less favourable way or to a lesser standard than Elite Athletes who are employees. In practice all Elite Athletes should, in my view, be treated according to standards equivalent to those that apply to employees. That is the right approach morally, it will extract best performance, and, in some instances, it may well also be the correct legal approach.

### **Funding Model**

28. There is a strong perception that the current HPSNZ funding model overwhelmingly prioritises short term performance goals and that is the key factor determining the level of funding for each NSO and Elite Athlete. In simple terms, the current model focuses on performance outcomes not welfare considerations.
29. Under the current high performance model, NSOs are primarily responsible for the engagement and treatment of Elite Athletes. Many NSOs do not have the level of resource, training or expertise they need to meet their responsibilities in terms of the rights and welfare needs of their Elite Athletes. This issue must be a priority not just for NSOs but for the high performance system as a whole to address.
30. There is a collective desire for the high performance system in New Zealand to provide Elite Athletes with the best possible opportunity to perform to their potential but not at the expense of their welfare and wellbeing. To achieve this balance, there needs to be greater transparency about the weighting and application of the funding criteria, greater certainty of funding for NSOs and Elite Athletes wherever possible and a broader and longer term view of performance success than results in the next upcoming pinnacle event.
31. The current HPSNZ funding model sees Elite Athletes, the ones actually required to perform, in the most uncertain financial position with the majority receiving short term funding based on achieving defined performance results at pinnacle events. While any funding model needs to be objective, transparent, performance based and fair, a review of the funding model should consider whether there is any good reason or justification for treating Elite Athletes differently from other participants in the high performance system when it comes to the structure of their funding arrangements. A review of the funding

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<sup>5</sup> The differences between employees and contractors are summarised in section 6 of the review.

model would also benefit from direct Elite Athlete input and involvement.

### **High Performance Environments**

32. How Elite Athletes are engaged and treated will depend on the culture of each NSO's high performance environment, which in turn will be determined by the values, strategy, policies and the people operating in that environment. The NSOs need to address each of these aspects: an NSO can agree a strategy and draft policies but it will not improve its culture if its people, especially its leaders, do not support the approach being taken.
33. NSOs need to take responsibility for setting and maintaining the culture of their high performance environments with support from HPSNZ and Sport NZ as required. This will require careful and continuous management, oversight and review. An improved culture will lead to an improved Elite Athlete experience without compromising performance.
34. Sporting Organisations must make conscious decisions to choose how to win. That may require putting people before winning in the short term. Strong leadership may be required to create a sustainable and ethical performance culture within a Sporting Organisation.
35. Some sports have a long-standing culture based on a total commitment from their Elite Athletes to their sport to the exclusion of almost everything else. The strong belief of some participants within these sports, including from some Elite Athletes themselves, is that a focus on rights and welfare will be a distraction which will inevitably lead to a dumbing down of performance. In my view, that mindset is illogical, short term focused and contrary to all evidence both national and international. Such a mindset is a barrier to change and needs to be addressed head on by the sport as a whole if change is to be made.
36. Culture can be defined as the values, behaviours, beliefs and environments that shape people's experience within a system. In a high performance environment, culture is about what Elite Athletes 'see, hear and feel' on a daily basis in their sporting environment. Culture starts at the top of the organisation and permeates down.
37. One of the biggest risks Sporting Organisations face is a lack of alignment between the vision and culture of the Sporting Organisation as formally articulated and the culture that exists in reality. In effect, 'we say that we are about people, but everyone knows that all that really matters, and all that we are judged on, is on-field success'. Words mean nothing unless supported by actions and behaviour.

38. A clear theme arising from this review was that problems can arise when power becomes too concentrated in a Coach or High Performance Manager without sufficient checks and balances in terms of how they will perform their role. While the Board of an NSO has overall responsibility for the culture of their organisation, overseeing the high performance environment should be a key part of the High Performance Manager's (or equivalent) role. The operation of (and accountability for) a sport's high performance plan should never rest with just one person.
39. Elite Athletes need to have the mental and physical skills, experience and edge to perform under pressure at pinnacle events. While every athlete is different, and sports have different levels of individual decision making required, that edge is less likely to be developed by an Elite Athlete simply doing what he or she is told.
40. While there are different leadership and coaching styles, and no one style or approach will fit all, some Sporting Organisations may benefit from a change in leadership style from authoritative to a more inclusive, authentic approach if it is accepted that the way to get the best out of people is not by simply telling them what to do. The answer may also not always be to work harder. Some NSOs would benefit from a clearer understanding of the impact their environment has on behaviour and the concept of psychological safety in the context of high performance.<sup>6</sup>
41. The coach-Elite Athlete relationship is critical to performance. Hard, honest conversations have to happen in high performance environments; bullying or other inappropriate behaviour do not. NSOs need to be very clear as to their expectations in respect of the way people, including Elite Athletes, are treated within their environments and to provide the education, training and support needed to ensure these standards are met. There is no justification or reason for treating people unfairly and with a lack of respect.
42. Standards of behaviour must apply to everyone equally in the environment. It is not acceptable for an Elite Athlete, coach or other leader to be permitted to act or behave in inappropriate ways even if they are achieving, or are critical to achieving, on-field results. It is also not acceptable in a small country like New Zealand that the system waits until there is a chorus of complaints of bad behaviour or sufficiently bad results before interventions are made.
43. The All Blacks and BLACKCAPS are examples in New Zealand sport of how performance can be achieved while prioritising Elite Athlete rights or welfare.<sup>7</sup> The fundamentals as to how New Zealand Rugby and New Zealand Cricket prepare teams and develop individuals are applicable to other sporting environments even though the nature of the sport and the extent of available resources may be very different.

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<sup>6</sup> New Zealand is fortunate to have access to world leading expertise in these fields.

<sup>7</sup> For more detail see the body of the review including Appendix 6.

44. However, just as tellingly, in commercial life most successful businesses understand and invest in the welfare of their staff. Even the most results driven businesses understand that they need to have engaged, focused, respected employees who can have a say in the direction of the business and influence change. Why would sport be any different?
45. There is a range of structural issues which impact on Elite Athlete welfare as set out in the review. These include:
  - a. the HPSNZ funding model;
  - b. the HPSNZ service delivery model;
  - c. the wide variance in NSO capability and resources;
  - d. the NSO's policies and processes; and
  - e. an inconsistent and varying approach to how Elite Athletes are heard and their views and concerns taken into account.
46. Some of these structural issues will be easier to address than others. Some have hard costs attached; others do not. Much can be achieved within available resource constraints. The options in terms of how Elite Athletes are heard and represented are, for example, a key opportunity and focus area for this review.
47. NSOs should, where possible, directly engage and be responsible for the service providers operating within that environment. How this can most effectively be done needs to be determined on a sport by sport basis.

## 2. RECOMMENDATIONS

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1. NSOs and their stakeholders (including Elite Athletes) are consulted on all aspects of this review and the ongoing process to determine what improvements, if any, are required in relation to the rights and welfare needs of their Elite Athletes. The consultation process would benefit from independent, expert facilitation.
2. As part of the consultation process, Sporting Organisations and their stakeholders (including Elite Athletes):
  - a) explore the merits of an overarching set of principles governing high performance sport in New Zealand, which can then be applied and implemented on a case by case basis given the unique features of each sport's operating environment. These principles could lead to an Elite Athlete charter which documents the Elite Athlete experience as well as the importance of 'how' performance goals are achieved (section 5 of this review sets out some initial principles and considerations for further discussion);
  - b) identify the key structural and cultural elements required to address Elite Athletes' welfare needs (for example, clear purpose and vision; coaching philosophy; best practice inductions and transitions; review and debrief mechanisms; forums and opportunities for Elite Athletes to be heard; policies and dispute resolution processes); and
  - c) agree a process and priority in which to review and evaluate each sport's high performance environment to ensure compliance. This would benefit from independent and expert review of the critical structural and cultural aspects of the sport's high performance environment.
3. Sport NZ and HPSNZ develop leadership training that can be offered to NSO Board members, Chief Executives, High Performance Managers, Coaches and other team support personnel in relation to:
  - a) Elite Athletes' rights and welfare;
  - b) attributes of a world class high performance culture (on the basis leaders in performance may only know what they have seen and experienced in their sport); and
  - c) the potential competitive advantages of embracing inclusion and diversity.

4. The HPSNZ funding model is reviewed to find the optimal balance between short term performance goals and long term, sustainable development. In reviewing their funding model, Sport NZ and HPSNZ determine whether their vision and purpose are too focused on performance outcomes and whether the holistic needs of the athlete are given enough recognition and importance, while also considering how NSOs can be better equipped and resourced to meet their obligations to participants in their high performance environments.
5. The Athlete Life programme should be subject to review to ensure it is delivering on the career and off-field development needs of Elite Athletes.
6. Sporting Organisations should champion the benefits of diversity and inclusion at all levels of their sport. Some Sporting Organisations have prioritised the implementation of initiatives to bring about the required change but there is not a coordinated approach to gender or cultural equity issues across Sporting Organisations. This should be a priority across the sector as a whole going forward.
7. Additional matters to be considered further as part of the Sport Integrity review include:
  - a) whether the Sports Tribunal's role needs to be expanded or other reforms are necessary to facilitate a range of sporting integrity issues or disputes (which could extend to Elite Athlete disputes with their NSO); and
  - b) how reporting of serious issues in sport can be encouraged and a mechanism embedded across all sporting environments.

### 3. TERMINOLOGY

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‘**Athlete**’ and ‘**player**’ are used synonymously.

‘**Elite Athletes**’ refers to athletes over the age of 18 who have competed, or are likely to compete, at the Olympics, Paralympics or World Championships.

‘**HPSNZ**’ means High Performance Sport New Zealand.

‘**NSO**’ means a national sporting organisation.

‘**On-field results**’ refers to results on the field, court, water, track or whatever the surface may be.

‘**PEG**’ means an HPSNZ Performance Enhancement Grant.

‘**Prime Minister’s Scholarship**’ means the HPSNZ educational grants available to carded athletes during or after their sporting careers.

‘**Rights**’ refers to the Elite Athlete’s legal rights as a person and as an athlete.

‘**Sporting Organisations**’ means Sport NZ, High Performance Sport NZ, New Zealand Olympic Committee, New Zealand Paralympic Committee and NSOs.

‘**TUE**’ means Therapeutic Use Exemption.

‘**Welfare**’ refers to Elite Athlete wellbeing on and off the field including their health, safety and life outside of sport.

## 4. BACKGROUND

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### Introduction

Performance matters for Elite Athletes: it is what they train and prepare themselves for. Performance also matters for Sporting Organisations.<sup>8</sup> Under the current HPSNZ model it is the dominant factor determining the sport's high performance funding going forward. In addition, the aim is that:

- a) on-field performance produces heroes;
- b) heroes will inspire future generations;
- c) heroes will raise the profile of the sport; and
- d) profile, participants and fans increase the sport's commercial appeal.

In terms of medals won, New Zealand Elite Athletes have been incredibly successful since 2000.<sup>9</sup> Per capita, New Zealand is the number one nation in the world in terms of medal success for the Paralympics and third best performing at the most recent Olympic Games.

Medals cannot be won in such numbers without talented athletes, coaches and a high performance system that provides for athlete development in a coherent, supported way. Medal success alone suggests much is right with the current high performance system.

Accordingly, the starting point of this review is not that the current high performance system is broken or that wholesale change is required.

This review has been driven by a perceived need to assess and (if necessary) improve how we are treating our Elite Athletes. While the competitive demands in terms of what is required to win internationally are increasing, there is also an increasing realisation within New Zealand sport that the needs and expectations of society as a whole and young people in particular are changing and the high performance system must respond to and reflect those changes.

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<sup>8</sup> The focus of the review is on HPSNZ targeted sports, namely, athletics, rowing, yachting, cycling, canoe sprint, equestrian, rugby sevens (male and female), netball, hockey (women's), snow sports and Paralympics NZ. The review also considers the position of HPSNZ, Sport NZ, NZOC and other sports, including those that have a collective bargaining agreement in New Zealand (rugby, rugby league, netball, hockey, cricket and football). The review does not consider the position of athletes participating in eSports, notwithstanding there are professional eSport athletes, professional leagues and competitions and eSports are becoming mainstream; for example, eSport featured at the 2018 Asian Games as a demonstration sport but will be a medal event at the 2022 Asian Games.

<sup>9</sup> Since 2000 New Zealand has won 50 Olympic medals in both the Summer and Winter Olympic Games. In Rio in 2016 New Zealand won 18 medals (11 by women) from nine sports, surpassing the previous record tally of 13 medals from six sports at the London Games in 2012 (which in turn was up from nine medals in Beijing). Ireland, a country of about the same size and population, by contrast won six medals in London and two in Rio. New Zealand won 21 medals in the Paralympics in Rio in 2016, up from 17 medals in London in 2012.

Sporting Organisations need a stocktake to understand how our high performance environments are currently impacting on Elite Athletes' rights and welfare and how performance could be enhanced by changing the way they are treated and engaged.

The review has also been driven, at least in part, by a growing sense within some parts of the New Zealand sporting community that we may have lost sight of the importance of Elite Athlete welfare. At the time of writing, independent reviews are currently underway in no fewer than four national sports: Cycling, Hockey, Football and Triathlon.<sup>10</sup>

All of these reviews appear to have been driven, at least in part, by concerns raised by Elite Athletes about how they have been treated by their NSO and/or coach.

This is not necessarily surprising. Other countries with a strong high performance sports culture have, in recent times, experienced similar issues with their Elite Athletes.<sup>11</sup>

Although not everyone accepts there is a growing issue in New Zealand concerning the welfare of Elite Athletes, the nature and extent of the reviews currently taking place and the collective experiences of the people I spoke to convince me that there is.

While I am not in a position to quantify the size or prevalence of the issue, in my view it does not yet amount to a crisis. However, it is a fast-evolving situation and there are key structural and cultural issues that need to be further considered and addressed on a sport by sport basis. These issues are discussed further in the report below.

## **Terms of Review**

The scope of the review is set out in my terms of reference, a copy of which is attached as Appendix 1. The terms of the review are broad. There are specific issues relating to Elite Athletes' rights and welfare which could warrant a review on their own.<sup>12</sup> The focus of the review has therefore primarily been on the ways NSOs engage and treat their Elite Athletes and the impact this has on their rights and welfare.<sup>13</sup>

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<sup>10</sup> In addition, rowing has completed an internal review and netball has recently completed a comprehensive review into the performance of the Silver Ferns at the 2018 Commonwealth Games. I have not been provided with any information in relation to these reviews other than the recommendations publicly released following the netball review.

<sup>11</sup> For example, UK Sport is introducing system wide policies, funding and other measures in response to a series of reviews relating to the treatment of athletes.

<sup>12</sup> For example, gender equity issues in sport including issues relating to transgender athletes and athletes suffering from disorders of sexual differentiation, like South Africa's Caster Semenya, who has a condition called hyperandrogenism, which causes her to naturally produce more testosterone than the average female athlete. Higher levels of testosterone provide a performance advantage in some sports.

<sup>13</sup> Detailed information in relation to how the various Sporting Organisations operate is set out in the appendices.

Elite Athletes' rights and welfare cannot be examined in isolation. On the contrary, the factors and behaviours which determine and impact on Elite Athlete rights and welfare need to be addressed and I will attempt to do so in a manner consistent with the scope of my terms of reference.

A review on Elite Athletes is not to suggest or imply that the rights and needs of other participants, such as coaches, team support personnel or sub-elite athletes, are not important. They are, but do not fall within the scope of this review.

## **Purpose**

The purpose of this review is to help drive informed future decision making, not to mandate or impose solutions on Sporting Organisations. It is intended to be the first step in a process whereby Sporting Organisations determine what further action, if any, needs to be taken in this area. The report will feed into the wider Sport Integrity review being conducted by Sport NZ.

Sport NZ and HPSNZ have the option to mandate the inclusion of certain policies or processes designed to respect Elite Athletes' rights and/or improve their welfare. The issue is that requiring NSOs to undertake a compliance exercise as a condition of receiving funding is unlikely to be effective in terms of changing the culture of an environment, unless or until there is a perceived need to change the status quo.

The preferred approach, and the premise behind this report, is that Sporting Organisations (which by definition includes Sport NZ and HPSNZ) will be in a position individually and collectively to drive any change required only if each organisation understands and supports the reasons **why** change is necessary.

## **Process**

The starting point of this review has been to examine how Sporting Organisations are currently treating and engaging with their Elite Athletes and to question whether Sporting Organisations need to do more to cater for their rights and their welfare.

During the course of the review I interviewed 107 people<sup>14</sup> across 20 different Sporting Organisations.<sup>15</sup> I took notes of the interviews, which were sent to each interviewee for their review. I was also provided with written responses and other documentation, which included information relating to the approach of other countries.

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<sup>14</sup> Individual interviewees are not named but a breakdown of the type of people I interviewed is set out in Appendix 2.

<sup>15</sup> In conducting the review I have tried to listen to and assess with an open mind the information I have been provided. I come from a team sport background as a player, an administrator and as a lawyer. I have not been asked to do this review because I am independent or impartial but because I have over 25 years' experience in New Zealand and overseas working for, or representing, NSOs, Elite Athletes, coaches and other sporting bodies or participants including, on occasion, Players Associations.

I have been asked to do a review, not a formal investigation or other legal process. I was not, for example, tasked with investigating whether or not alleged acts of misconduct occurred or to assess the practical effectiveness of existing measures which Sporting Organisations have in place to deal with issues affecting Elite Athletes' rights or welfare. This review is an information gathering, not a fact finding, exercise.

The review has involved listening to and assessing information from people involved in different sporting environments. I have not necessarily received all the information in relation to a particular issue<sup>16</sup> nor been made aware of all the flow on consequences, not the least of which is the potential impact on other participants in the high performance system.

I have not spoken to everyone who might have been able to add value to this review on the basis that the subject is broad and the list of those who might have contributed is almost endless. Of those I did speak to, I was given differing accounts of experiences, sometimes by people within the same sport.<sup>17</sup> That is to be expected. The purpose of the review is not to reconcile conflicting views but to shine the light on a critical aspect of the high performance system so that Sporting Organisations can make decisions on what change, if any, is required going forward and to identify the opportunities and benefits that could be derived from making changes.

I take comfort from the fact that it will be for Sporting Organisations themselves, together with their key stakeholders, to determine the actions that need to be taken arising from this review. If those decisions are made following informed and inclusive debate, then this review will have served its purpose.

### **HPSNZ's 2030 Blueprint**

HPSNZ is in the process of reviewing where the high performance system wants to be by 2030 and how they are going to get there. HPSNZ has identified 13 strategic pillars, one of which is athlete welfare. HPSNZ has a new but experienced Chief Executive and a Board who are committed to consulting with stakeholders as they seek to evolve their organisation in order to better serve and impact the high performance system as a whole going forward.

My hope is that the issues raised in this review will be helpful for HPSNZ in undertaking their 2030 Blueprint, but this report is no substitute for direct communication and engagement with key stakeholders including Elite Athletes and/or their representatives.

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<sup>16</sup> In some instances access to personnel from particular sports was not possible because of other reviews which are taking place.

<sup>17</sup> For example, I was told by different people in different ways (not all of them complimentary) that high performance sport is complex. I accept that is true in the sense that a huge amount of work goes on behind the scenes by Sporting Organisations to develop and prepare Elite Athletes to get to the start line. This report does not attempt to summarise or break down what each Sporting Organisation does in this regard nor is that level of detail necessary to perform the task I have been asked to do.

## 5. SUMMARY

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The ultimate purpose of all Sporting Organisations is related directly or indirectly to inspiring and unifying New Zealand. That purpose can never be realised solely by achieving binary performance outcomes. New Zealanders care very deeply about how our Elite Athletes compete and how they win. They want to see our national values on display – hard work, team first, humility – and they want to know that our athletes are treated fairly and with respect. It is the combination of these factors (outcomes and how they are achieved) that inspires and unifies the country.

The drivers behind conducting this review included a concern that the high performance system, or parts of it, may have become overly focused on events and outcomes and, as a result, Elite Athletes may have at times become marginalised in terms of catering appropriately for their rights and welfare.

### **Elite Athletes**

Elite Athletes are critical to the success of Sporting Organisations. They are also a source of great pride to many New Zealanders.

Elite Athletes are typically driven, high achievers. They want to perform to their best. They know that statistically the chances of achieving an Olympic gold medal, or whatever the ultimate performance goal may be, are slim but they are willing to fully commit themselves to the attempt. In many cases, they have received substantial and long running support from families or other personal networks.

### **Why a Rights Approach?**

In my view it is important for Sporting Organisations to consider issues relating to Elite Athletes through a ‘rights’ lens. Sporting Organisations have Boards and an executive who make decisions in the best interests of the sport as a whole. While this approach does not need to change, it does need to take into account that Elite Athletes are not just beneficiaries of whatever assistance the sport is able to provide but key stakeholders who have a right to have a say in how their sport is run.

This will require a change in approach and mindset from some (but not all) sports administrators, which will need to happen sooner rather than later.<sup>18</sup> The more a Sporting Organisation fails to properly implement the required measures to hear and respond to the views and legitimate interests of Elite Athletes, the greater the prospect that those Elite Athletes will take steps to exercise the rights and bargaining power they have.

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<sup>18</sup> As one interviewee put it, “NSOs need to feel comfortable about being challenged and have some faith that the outcome of a robust and honest process will be better than outcomes that lack a quality process, honesty and fair representation of all the involved stakeholders”.

Now is the right time for all Sporting Organisations to be reflecting on how each sport's high performance environment is operating and whether the sport should continue down the same path or whether there might be a better path. Sporting Organisations should be proactive while they still have the opportunity to do so.

While there will be costs associated with Sporting Organisations implementing a review of their environments, there is the risk of missed opportunity and much greater costs if no action is taken. At best, addressing issues relating to Elite Athletes' rights and welfare will lead to improved outcomes, including performance. At the very least, it will assist in preventing the type of issues and behaviours which are under review in a number of NSOs currently, which are costly and damaging to the sport as a whole.

Any discussion about Elite Athlete rights should also acknowledge the obligations of athletes to both the Sporting Organisations and the sports they represent. A focus on how Elite Athletes are treated by their Sporting Organisations should not therefore be seen as diminishing the athlete's own responsibility and accountability for how they train, compete and behave generally. Equally the privilege of 'wearing the fern' cannot be a blanket justification for placing unreasonable or excessive demands on an Elite Athlete as a requirement of representing his or her country.

### **Elite Athletes' Rights and Welfare**

NSOs have an obligation to organise and run their sport in a way that ensures participants, including Elite Athletes, can participate safely.<sup>19</sup> The duty of care NSOs have to their Elite Athletes is not just in relation to their safety but to ensure their rights generally are being respected and their welfare needs are being met.<sup>20</sup> Each NSO needs to determine how this can best be done given the resources and unique environment each sport operates in.

Under the current model HPSNZ clearly has a duty in respect of its employees embedded in an NSO environment, but the question is where do its responsibilities start and end more generally in relation to the high performance environments Elite Athletes operate in, in circumstances where HPSNZ is providing funding and expertise to the NSO?

The nature and extent of any duties of care owed by Sport NZ and/or HPSNZ will depend on the particular funding arrangements and circumstances of each sport but, under the current model, it is the NSO who is primarily responsible for the high performance environment in its sport. This is not a stand-alone responsibility, however, and each NSO needs to be resourced so it can discharge its legal and other obligations to the participants in its high performance environment. I was informed that HPSNZ and Sport NZ are committed to supporting NSOs in this regard.

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<sup>19</sup> NZOC and Paralympics NZ also have duties in relation to Elite Athletes while part of their teams at pinnacle events.

<sup>20</sup> "... there is a legal and moral duty of care incumbent on those who organise sport, to ensure that risks of non-accidental violence are identified and mitigated" ('IOC Consensus Statement: Harassment and abuse (non-accidental violence) in sport', 2016).

Unless the current model changes, NSOs need to embrace their role and responsibilities in terms of providing an environment and experience for their Elite Athletes and other personnel.<sup>21</sup> This is the starting point, which, in turn, provides the opportunity to improve rather than compromise performance and ultimately outcomes.

The coach-Elite Athlete relationship is critical to performance and is also a key potential risk to the welfare of Elite Athletes. NSOs need to be very clear as to the expectations of their coach and management team in respect of the way people, including Elite Athletes, are treated and to provide the support needed to ensure these standards are met. In addition, checks and balances need to be in place to ensure there is effective management and monitoring of the Elite Athlete environment. While the Board of an NSO has overall responsibility for the culture of their organisation, overseeing the high performance environment should be a key part of the High Performance Manager's (or equivalent) role. The operation of (and accountability for) a sport's high performance plan should never rest with just one person.

Issues relating to Elite Athletes' rights and welfare are directly relevant to the integrity of sport. Maintaining the integrity of sport requires good decision making by all participants within the sporting high performance system, including Elite Athletes. This requires investment in education and in supporting Elite Athletes to make good decisions in pressure situations on and off the field.

## **Funding**

All HPSNZ targeted sports rely heavily on HPSNZ funding. HPSNZ is set up to focus on and incentivise performance on the world stage. HPSNZ funds NSOs, coaches, support personnel and Elite Athletes in accordance with its investment framework and strategy. Funds are limited, so if one sport or its athletes are performing and warrant additional investment, then unless greater government funding is secured, any additional funding ultimately needs to come at another sport's expense.<sup>22</sup> How HPSNZ funds different sports given their performance, popularity and need for stability is a constant challenge for HPSNZ to address. Difficult funding decisions must inevitably be made when there is a fixed amount of funding available and a variety of pressing needs and deserving recipients.

The current HPSNZ funding model sees Elite Athletes, the ones actually required to perform, in the most vulnerable and uncertain position in terms of their ongoing employment or engagement.<sup>23</sup>

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<sup>21</sup> Accepting that different sports have different levels of access to and responsibility for their Elite Athletes depending on the nature of that sport and its high performance environment.

<sup>22</sup> Some of the sports I spoke to certainly perceive the system to work this way; that is, they are competing with other sports for a share of a fixed pie.

<sup>23</sup> The reality for most Elite Athletes is that there is one employer/provider (the relevant NSO) in New Zealand and they have a limited ability to seek employment or engagement in a different Sporting Organisation if they want to play or compete at the highest level. This leaves Elite Athletes particularly vulnerable and less likely to take action that may damage the relationship with the monopoly provider (the NSO).

In contrast, other participants (for example, senior management, High Performance Managers, coaches, doctors, physios and other service providers), who all contribute to, and have some accountability for, performance, are all employed or contracted on terms that provide for greater certainty than the terms which most Elite Athletes in HPSNZ targeted sports receive.<sup>24</sup>

The question is whether there is any good reason or justification for treating Elite Athletes differently from other participants in the high performance system. If the view is Elite Athletes need to be financially incentivised to perform, then why is this philosophy or approach not consistently applied across other participants in the high performance system? If the answer is that the high performance system would not attract the quality of people it needs if it adopted this approach, then this logic should also be applied to Elite Athletes. Elite Athletes should not be viewed as any less important or any more expendable on the basis that there are others waiting in line who are willing and able to take their place.

The current HPSNZ funding model is simple, objective, performance based and transparent. Many people, including Elite Athletes, like it for these reasons. But the model rewards short term success, which is a factor driving the decisions and behaviour of Sporting Organisations and related personnel. Changing the funding model from a focus on short term on-field success to a longer term, sustainable and broader vision of success will have a direct impact on the welfare of Elite Athletes by providing certainty and removing some anxiety for the most important and the most vulnerable participants in the high performance system.

While commitments are in place for the lead up to Tokyo in 2020, HPSNZ is reviewing the current funding model as part of its 2030 Blueprint. HPSNZ's review will take account of the needs of the high performance system as a whole including participants other than Elite Athletes. For the purposes of my review, I note that even comparatively minor changes to the current PEGs funding model will have a positive impact on an Elite Athlete's welfare.<sup>25</sup>

### **Elite Athlete Engagement**

Having a top down environment where athletes are told what to do and how to do it is not a pre-requisite for high performance success. Equally, high performance sport is not, as I was told, athletes 'holding hands and singing *Kumbaya* around the camp fire'. There are different leadership and coaching styles, and no one style or approach will fit all. A cookie cutter approach to high performance will not work and this review is not suggesting it will.

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<sup>24</sup> The exception is the small number of Elite Athletes who receive up to 4 years' secured funding and coaches in some HPSNZ targeted sports who may be on short term contracts which are dependent on performing at a pinnacle event and therefore retaining HPSNZ funding.

<sup>25</sup> For example, having a percentage of a PEG guaranteed for a defined period, a percentage performance based and a percentage payable based on agreed contributions or givebacks to their sport. There will be learnings from other countries' systems in this regard. For example, I was told that Holland adjusts grants to take into account the age (and therefore increased expenses) of athletes and that retiring athletes receive 70% of one month's grant for every year the athlete has been carded, to assist with transition.

Athlete welfare and performance should be seen as mutually reinforcing, not in conflict with each other. The goal should be to achieve both and not one at the expense of the other. Many (but not all) of the people I spoke to view athlete welfare as a pre-requisite to optimising the prospects of achieving performance: a balanced, supported, engaged athlete will perform better or, at the least, will not perform worse.

There are different ways in which an NSO can engage with its Elite Athletes, which have to take into account the nature of their Elite Athletes and the particular features of that sport. Whatever the approach, there is no substitute for direct communication with Elite Athletes at all levels of the organisation. I was provided with examples of Elite Athletes who felt isolated, ignored or disrespected by key personnel at critical moments.<sup>26</sup> A lack of communication was often a contributing reason to their perceived ill treatment.

Elite Athletes need to be able to have open and honest conversations without fear of recrimination or judgement. Elite Athletes need to be able to express their vulnerabilities and their concerns. In particular, Elite Athletes have to be able to raise issues of concern that relate to their training or performances directly with those that have the power to address those issues, without fear of repercussion or recrimination. That should be a given in a high performance environment in New Zealand. It is not.<sup>27</sup>

Leaders must take the steps required to implement a high performance environment where these types of conversations can safely occur. If they do not, they are failing in their responsibility to manage and oversee the environment and they are failing in their duty of care to their Elite Athletes. The goal should be to have an environment that identifies and addresses issues relating to Elite Athletes early so that they do not fester and inappropriate behaviours are not accepted or normalised in that environment.

### **Athlete Voice**

While direct communication will always be important, Elite Athletes within each sport need to determine for themselves how they want to be organised and heard. There are different options available in terms of leadership and advisory groups. The primary role of these bodies should be to work with the Sporting Organisation to shape or influence matters which the Sporting Organisation wants and/or would benefit from athlete input into or advice on.

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<sup>26</sup> A key moment is when a desired result or goal has not been achieved. Elite Athletes described having feelings of loss, guilt or abandonment when this occurs in contrast to when they have been successful. These are the times when Elite Athletes need to be most supported.

<sup>27</sup> All sports are not in the same position in this regard. While I was told of cases where Elite Athletes did not feel comfortable raising issues within their environment, I was also told of other NSO high performance environments where Elite Athletes feel entirely comfortable raising issues of concern. Much depends on the personality and maturity of the Elite Athlete concerned and their perception of whether they will be listened to and their concerns acted upon.

A leadership or advisory group does not necessarily have the skills, experience or mandate to negotiate issues relating to agreements, selection or the environment generally on behalf of all the sport's Elite Athletes. That is a different role and one that team sports look to protect individual athletes from having to perform by having a Players Association. A body that collectively represents the interests of Elite Athletes can perform a role that goes beyond just being a mechanism for providing the views of athletes to one which can collectively negotiate and agree matters on their behalf. It is clear that any such body will not survive if it does not have the support of its Elite Athlete members.<sup>28</sup>

The overall (but not universal) experience of team sports has been that having a body independent of, and not beholden to, the NSO to collectively represent their professional athletes has been a very positive development for that sport in terms of enhancing the professional playing environment. The model is akin to a partnership one whereby each party recognises the interests and needs of the other and agrees to work together to address issues relating to the professional game. An independent body also provides Elite Athletes with an additional mechanism for voicing issues of concern within their environment, particularly in circumstances where no one athlete wishes to raise that issue directly with their NSO.

HPSNZ targeted sports (other than hockey, netball and rugby sevens) do not have access to a Players Association or other representative body although an Athletes Federation has been set up which has the potential to fulfil this function. To date, the Athletes Federation does not have the mandate or the resources to do anything other than provide assistance to athletes who seek their help on a case by case basis.

In the absence of any such representative body, HPSNZ targeted sports have used a range of informal and formal means to try to engage directly with their Elite Athletes. The nature and scope of that engagement varies from sport to sport but is primarily based on receiving athlete input and looking to agree outcomes rather than a formalised commitment to joint decision making on particular issues relating to Elite Athletes.

If Elite Athletes want to be collectively organised and/or independently represented, that representative body needs funding to ensure it is independent of, and not beholden to, any Sporting Organisation. If Elite Athletes do not want that representation, the focus should be on how the athletes themselves can meaningfully engage with and be heard by their Sporting Organisation on all key aspects of their treatment on and off the field. Some NSOs have made real progress in terms of how this can be done, but the key ongoing issue to address with these models is the inequality of bargaining power between NSOs on the one hand and Elite Athletes on the other.

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<sup>28</sup> I was told of examples where Players Associations have been set up in sports but have not survived, ultimately because the athletes themselves have not prioritised or championed the need for them to do so.

This inequality exists across many sports. For example, if a young athlete is offered a contract by an NSO, their ability to change that agreement is in reality almost non-existent, irrespective of how onerous or unfair the terms might be. And if that athlete's training regime is unfair or excessive, and is impacting on his or her welfare, in practice the Elite Athlete will generally 'suck it up' because of a perception that speaking up will work against them and/or there is nowhere else to go.

If an Elite Athlete representative body or alternative mechanism exists which has the support and backing of its members, a Sporting Organisation has the opportunity to work with that body to develop fair and balanced contractual terms for Elite Athletes which address, among other things, the athletes' training and competition needs as well as wider welfare and wellbeing issues.

This will require a change in mindset and a leap of faith from some Sporting Organisations: it will not be just about getting the athlete representative body to agree or sign off on what the Sporting Organisation has already decided to do. And it will require letting go of total 'control' and moving to an approach based on genuine consultation and engagement.

The lesson from team sports is that, while there will be bumps along the way, the sport will benefit from the athletes being represented in an organised and independent way. NZ Rugby and NZ Cricket believe that their relationship with their players is a source of competitive advantage.<sup>29</sup> For both sports, the respective Players Associations have been an integral part of forming, maintaining and improving the relationship and treatment of players.<sup>30</sup> That in turn has aided performance and player longevity.<sup>31</sup> It has also provided a mechanism to adopt a joint approach to resolving key issues and challenges within the sport.<sup>32</sup>

## **Dispute Resolution**

Some issues are complex and cannot be resolved through dialogue between the athlete body and the Sporting Organisation concerned. In some cases, the relief sought cannot be granted without detrimentally impacting on other athletes, participants or the Sporting Organisation itself. These cases need independent assistance to resolve.

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<sup>29</sup> The All Blacks have consistently been the number one team in the world in recent times and the last 6 years have been the most successful for the BLACKCAPS in their history.

<sup>30</sup> Not all team sports with a Players Association achieve, or have achieved, on-field success. Clearly there are other factors involved. The point, not to be overstated, is that both rugby and cricket in New Zealand attribute their success in part to the nature of their relationship with their leading players and the role the Players Association plays on their behalf.

<sup>31</sup> HPSNZ asserts that, overall, New Zealand's games teams are getting older and more experienced; for example, 50% of athletes attending the Rio Games had attended more than one Olympics compared with 36% for the rest of the world. These overall statistics can mask what is happening in individual sports; for example, I was informed of a sport that lost six athletes post Rio who were aged between 24 and 26 years old.

<sup>32</sup> I was told that "NSOs may be surprised but given the right environment and support athletes will more often than not become solution focused, and they will contribute good ideas. NSOs need to see that the collective engagement (and representation) of the athletes, done correctly, actually becomes their number one asset. Educating and engaging the athletes on the issues means the challenges then become problems to be solved, as opposed to frustrations and issues that undermine trust and confidence. NSOs need to be prepared to be more transparent and vulnerable. No one has all the answers, but everyone has the ability to communicate honestly and become solution focused".

Elite Athletes who are employees can resolve disputes in mediation or, if necessary, they can be heard in the Employment Relations Authority or the Employment Court. Selection disputes, anti-doping matters and other disputes that fall within their jurisdiction can be resolved by the Sports Tribunal.

In the vast majority of cases, all affected parties will benefit from a process where they shape and control the outcome rather than have it imposed on them. Mediation is a powerful tool with a proven record of success for this reason. It has been extensively used by some NSOs and other organisations for people based disputes<sup>33</sup> and its use has been recommended on a more widespread basis.<sup>34</sup> I share that view.

### **Elite Athlete Welfare and Performance**

Sporting Organisations need to assess how they treat and engage their Elite Athletes. The way it has been done in the past may not be the best way going forward even if the historical way has been successful. The need for change cannot be dismissed as the PC brigade wanting to be soft on performance. The people I spoke to and the available evidence suggest that having engaged, supported athletes will improve performance.

While all Sporting Organisations claim to see the importance of athlete engagement, not all these organisations appear to genuinely believe that an engaged, empowered athlete who is listened to and supports the vision, standards and behaviours required by his or her environment will perform better. This is perhaps where the debate needs to start.<sup>35</sup>

Past results and experiences should not set the parameters of this debate. The fact that some sports have achieved success on the world stage through a particular approach is not in dispute. The question is how well could those sports and their Elite Athletes do under an alternative approach which retains the core of what is necessary to achieve success in their sport but does so while focusing on the broader individual and development needs of their Elite Athletes? Has success been achieved in the past because of a narrow focus on performance or would the calibre and commitment of the athlete concerned have meant that both on and off the field success could have been achieved?

My view is that the New Zealand high performance system should take the lead in changing attitudes and approaches to the engagement and treatment of Elite Athletes, not only because it is the right thing to do but also because there is the opportunity to do so in ways that will enhance performance.

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<sup>33</sup> For example, NZ Rugby has extensively used mediation for coach, player and other people related disputes since 2001 and the Human Rights Commission provides a free and confidential mediation service.

<sup>34</sup> Don Mackinnon's 2015 review of the New Zealand Sports Tribunal.

<sup>35</sup> A leading sports psychologist told me that athlete welfare should be the cake and performance the icing. Bake a good cake and everyone wins. The sports psychologist has never seen performance compromised by getting athlete welfare right but you need to have trust that this approach will work. His observation was that there seems to be a real closed mindedness amongst some sports administrators that this approach can work and deliver other additional benefits that an approach based solely on achieving a performance outcome will not.

The right people will need to be in the room to determine the way forward for each sport, but the starting point has to be an awareness of the importance of issues relating to Elite Athlete rights and/or welfare, an open mind to new approaches, and a commitment to involve Elite Athletes in the process and to implement any agreed change in a transparent and consistent manner.

The goal should be to engrain issues relating to Elite Athlete rights and welfare into New Zealand's high performance system in a way that can be a source of competitive advantage. Are there benefits in a uniquely Kiwi approach to high performance and, if so, how can they be applied given the complexities and uniqueness of the different environments sports operate in?

### **NSO Capability and Support**

NSOs, particularly the NSOs of HPSNZ targeted sports, are lean organisations so adding head count is not a solution unless this is accompanied with the necessary financial, human resources and related support. If the current high performance model is unchanged going forward, my view is that this should be HPSNZ's primary role together with a supporting role from Sport NZ, NZOC and Paralympics NZ, where appropriate.

The focus should therefore be on how to meaningfully support and upskill NSOs to perform this role. Each NSO needs to have the resource to provide a bespoke high performance programme that fits the needs of their particular Elite Athletes and that sport. At a minimum, this requires an NSO to be able to effectively manage, educate and oversee the people and the culture of their high performance environment. Of particular importance are para athletes within their sport, given their additional welfare needs depending on the nature of their disability.

There needs to be effective monitoring and evaluation of high performance environments. It is not acceptable in a small country like New Zealand that the system waits until there is a chorus of complaints of bad behaviour or sufficiently bad results before interventions are made. Regular and in-depth scrutiny at different times in a campaign cycle will assist in uncovering issues or behaviours in time for them to be addressed at an early stage. Checks and balances need to be in place to ensure that the review mechanism is delivering accurate and reliable information.

### **HPSNZ**

Elite Athletes need access to specialist resource and support (for example, medical, physiotherapy, sports psychology, nutrition, strength and conditioning). These services can be provided either by a centralised body like HPSNZ or directly through the NSO. Whatever the delivery model, for the service providers to have maximum impact they need to spend sufficient time in the Elite Athlete environment to know the athletes they are servicing and to build the required relationship of trust and confidence.

There also needs to be a coordinated approach to ensure Elite Athletes receive the support they need while not being submerged by an array of providers all trying to make a difference.<sup>36</sup> HPSNZ is well aware of these requirements and I was provided with examples of where the system is perceived to be working well in this regard.

There was a wider range of responses to the Athlete Life service provided by HPSNZ. Overall the reaction was such that how Elite Athlete career and life skills can best be delivered and engrained into high performance environments is a matter that should be subject to an independent review.

There was universal acclaim for Prime Minister's Scholarships and the support and flexibility they provided in encouraging Elite Athletes to study during or after their sporting careers.

### **Diversity and Inclusion**

Gender and diversity are complex social issues. There is a chronic and systemic under-representation of women and ethnic minorities in high performance sport in general and in leadership and coaching roles in particular. This can have a direct impact on the welfare of Elite Athletes and was raised by a number of the people I spoke to.

The answer is not to automatically appoint women or people from different ethnic backgrounds to roles if they do not have the skills or experience to perform but to address the underlying causes of this under representation. Sporting Organisations should be championing the benefits of diversity and inclusion at all levels of their sport. Some Sporting Organisations have prioritised the implementation of initiatives to bring about the required change but there is not a coordinated approach to gender equity issues across Sporting Organisations. This should be a priority across the sector as a whole going forward.<sup>37</sup>

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<sup>36</sup> The importance of an uncluttered support environment around Elite Athletes came through in the interviews I had with HPSNZ personnel, team management and the athletes themselves.

<sup>37</sup> I was informed of the initiatives different Sporting Organisations are implementing to address these issues. For example, gender equality is one of the strategic pillars of HPSNZ's 2030 Blueprint. In addition, Netball New Zealand, New Zealand Rugby, New Zealand Cricket, New Zealand Football, New Zealand Rugby League and Hockey New Zealand launched the initiative known as Sport For Everyone in May 2016 as part of a commitment to establishing a framework for diversity and inclusion within their individual organisations. There has not been any further collective action or follow up since that launch. Significant improvements have been made across the sector, for example, in the number of women on Sporting Organisation Boards and the appointment process for key sporting roles. I heard about one Sporting Organisation performing blind shortlisting of applicants (removing the name and gender from the applications) and subconscious bias training for interviewers.

## 6. GUIDING PRINCIPLES

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It is important not to homogenise what are very different environments when considering the rights and welfare of their Elite Athletes. In addition, there is a significant disparity in resources available to the different NSOs covered by this review. In particular, sports benefiting from commercial revenue have options that other sports simply do not have.<sup>38</sup>

Notwithstanding these differences, my view is that there are some common guiding principles and external considerations or influences that apply no matter the Elite Athlete and no matter the sporting context.

The potential exists for a process to be followed whereby these principles or considerations, once agreed, could be incorporated into an Elite Athlete charter which documents the Elite Athlete experience as well as the importance of ‘how’ performance goals are achieved.

### **Society is Changing and Sports Need to As Well**

Sports have traditionally been self-regulating. NSOs have their own rules or are bound by their international federation’s rules. These rules and any applicable policies are binding on Elite Athletes either by way of a direct agreement or indirectly through their membership of a club or other affiliated body. While Sporting Organisations are subject to the law, they have traditionally been provided with a high degree of autonomy to regulate both on- and off-field behaviour.

The rules and policies for dealing with Elite Athletes vary from sport to sport but each Sporting Organisation needs to consider and respond to changes in societal norms and accepted standards of behaviour.<sup>39</sup>

The majority of Elite Athletes are aged 18 to 35 and are part of the millennial generation. Millennials seek success, contribution and personal growth at a more rapid rate than previous generations. Technology and social media have changed the way people think, communicate and behave. Millennials do not want to be just told what to do but want to see and understand the bigger picture. There is not the same deference to authority as there has been in the past nor, in a sporting context, the same belief that it is acceptable to lead, coach or behave in a certain way just because that is the way it has always been done.<sup>40</sup>

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<sup>38</sup> For example, NZ Rugby had revenues of \$257 million and \$33 million profit in the 2017 financial year (when the British and Irish Lions toured) while at the other end of the spectrum some sports’ high performance programme is entirely dependent on HPSNZ funding. If the funding is cut, changes to the programme have to be made.

<sup>39</sup> Baroness Tanni Grey-Thompson in the ‘Duty of Care in Sport’ review said, “*Sport cannot think of itself as special or different or able to behave outside what are considered acceptable behaviour patterns.*”

<sup>40</sup> One former Elite Athlete described it in these terms: “*[Coach] has for a long time used a top down approach. The majority of athletes were ok with that, do what coach says. But as new players (generational) came through the team, his same methods*

It is not just the demands of millennials that should be driving change but the need for Sporting Organisations to reflect the changing culture and society within New Zealand as a whole. While high performance sport will always be about commitment and work ethic, Sporting Organisations do need to keep pace with societal changes. I was told of instances of conduct or behaviour in the past which could or should never be deemed acceptable by today's standards.<sup>41</sup>

I heard examples of organisations and individuals who have changed their culture or approach to meet the needs of their people and to better reflect the customs, norms and demographics of today's society. In some cases, the aim is more ambitious; for example, New Zealand Rugby is not seeking to change the attitudes and behaviours of its participants but to be a force for change for the wider community as it looks to enact the recommendations of the Respect and Responsibility review conducted in 2017.

The need to evolve is not limited to New Zealand. Even the most entrenched of international sporting institutions have recognised the need to change. FIFA is an example of an international sports federation which is endeavouring to adopt a human rights approach and embracing the value of an independent association representing professional football players. That has not always been the case.<sup>42</sup>

Bill Walsh, a leading NFL head coach, summed up the need for sporting organisations to evolve their approach as follows:

*“Management today recognizes that to have a winning organization, it has to be more knowledgeable and competent in dealing with and developing people. That is the most fundamental change. The real task in sports is to bring together groups of people to accomplish something. In the old days, the approach was rather crude. The organization would simply discard a player who did not fit a specific, predefined mould...*

*...Today, in sports as elsewhere, individualism is the general rule. Some of the most talented people are the ones who are the most independent. That has required from management a fundamental change in the art and skill of communication and in organizational development. Most important, there has been much more recognition and acknowledgment of the uniqueness of each individual and the need that people have for some degree of security...*

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*were not always appreciated. They would work in the short term, but the millennials liked to have more of a voice, question and raise ideas, challenge, look for change technically/tactically. [Coach] did not see the importance of this or simply may not have wanted to change. Hence some of these players came across as outspoken or as having a bad attitude. They were dropped. What may have been an attempt to improve the environment came across as disrespectful.”*

<sup>41</sup> These ranged from a whole class of children being caned because no one owned up to a misdeed to, in a sporting context, Elite Athletes being pressured not to miss training in order to attend significant personal or family events.

<sup>42</sup> “Less than 25 years ago, the Secretary General of the world's largest sports federation was asked by a Brazilian magazine what he thought about a union of professional football players. His answer was very clear: ‘FIFA doesn't talk to players.’ FIFA it was, and Sepp Blatter it was. What a difference to half a year ago, when FIFA and FIFPro signed an agreement that formalised the role of professional players in defining the future of the sport. ‘An important milestone in the improvement of the global governance of professional football,’ said FIFA President Gianni Infantino.”  
[http://playthegame.org/news/comments/2018/067\\_the-athletes-right-to-have-a-voice/](http://playthegame.org/news/comments/2018/067_the-athletes-right-to-have-a-voice/)

*...Those teams that have been most successful are the ones that have demonstrated the greatest commitment to their people. They are the ones that have created the greatest sense of belonging.”<sup>43</sup>*

## **How Elite Athletes Achieve Success Matters**

New Zealanders want to see their values reflected in how results are achieved. The rules are important: a drug taker is a cheat not a champion. It is not acceptable to use sand paper to alter a cricket ball to try to win a match. The way we conduct ourselves is also important: when New Zealand hosts visiting national teams, we should do so with respect and courtesy even if our team is not treated the same way in their country.

Drug taking, cheating and poor hosting are examples of what would, I hope, be deemed unacceptable practices by Sporting Organisations, athletes and New Zealanders alike.

It takes strong leadership to ensure values override a sole focus on winning. Sporting Organisations must make conscious decisions to choose how to win. That may require putting people before winning in the short term. New people and/or values may be required to create a sustainable and ethical performance culture within a Sporting Organisation.

New Zealand Cricket is an example of an NSO fundamentally changing their approach to how they play the game. Currently the BLACKCAPS are at an all-time high. In 2013 it was a different story entirely with new coach Mike Hesson appointing Brendon McCullum as captain in controversial circumstances. The team hit rock bottom on the field when they were bowled out for 45 in a test match in South Africa. The coach, captain and manager adopted a new approach based on respecting the opposition, respecting the game and enjoying the game. Part of their motivation was around being the type of players and people that the New Zealand public respects.<sup>44</sup>

## **Elite Athletes are People First**

While Sporting Organisations have varying degrees of control over their rules and their environments, all have legal and moral obligations to the Elite Athletes and other sporting participants within their domain.

Whether a Sporting Organisation engages their Elite Athletes as employees, contractors or volunteers, they are dealing with people not commodities.

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<sup>43</sup> <https://hbr.org/1993/01/to-build-a-winning-team-an-interview-with-head-coach-bill-walsh>

<sup>44</sup> Brendon McCullum expressed it in this way in a recent media interview: “New Zealanders are very humble and hard-working. You’ve got to be a representation of the people who support you. Once you are authentic to that, it becomes easy to go out there and play the game you love, rather than be someone you’re not. New Zealanders want to see a team playing with plenty of passion, plenty of pride, plenty of humility and respect for the opposition and the game itself. Hopefully they succeed, but if not, they are hard to beat.”

Leaders in Sporting Organisations should ask themselves whether they are making decisions having considered and put due weight on the collective and individual people impact of those decisions. Would their decisions be different if they did?<sup>45</sup>

### **Athlete Centred Approach**

Performance issues are often linked to a person's welfare and mental wellbeing. Elite Athletes need the mind to work as optimally as the body. Sports psychology is a critical part of the support Elite Athletes need.<sup>46</sup> High performance is not about athletes being commanded by someone at the top with all the answers. I was told that it would be arrogant to think it still is. NSOs need to be aware of the demands of their high performance environments, how these have changed over time and the impacts these can have on Elite Athletes. This was eloquently summarised by the Chief Executive of an NSO as follows:

*“We are building ‘programmes’ run by coaches and administrators that bring athletes in at a young age to train long hours. This is, I think, different from a decade or two ago when athletes (particularly in individual sports) used to have to run their own programmes. This has two consequences:*

*1. Athletes have little power of self-determination and therefore rely on coaches and administrators to make decisions that affect their wellbeing. Those coaches and administrators are making decisions with a performance focus, and with short term pressure to deliver results. They are also in many cases unqualified to make decisions with such far-reaching consequences, and probably don't understand that a focus on athlete wellbeing will also be good for performance as happy, self-realised individuals are more likely to succeed; and*

*2. The type of athletes who make it through our system is probably changing – when athletes had to run their own programmes, only the ones who had decent life skills were likely to stay in sport. Now, because athletes have less decisions to make and have more resources provided, a different type of person can be successful. I would argue that this places a greater responsibility on administrators and coaches to look after athletes.”*

Best practice, in the view of many of those I interviewed, is for NSOs to adopt an athlete centred approach to high performance.<sup>47</sup> The ‘how’ will differ from sport to sport but such an approach essentially requires an NSO to put the holistic needs of their Elite Athletes at the heart of everything they do from a high performance perspective.<sup>48</sup> The focus is then on a developmental approach rather than solely a performance outcome.<sup>49</sup>

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<sup>45</sup> One interviewee spoke about asking the question whether Elite Athletes would be treated in that way if they were your children. If not, why would you treat someone else's children in that way?

<sup>46</sup> One type of sports psychology deals with mental skills training, which teaches athletes to use psychological skills to, for example, control anxiety. The other deals with psychological therapy, which applies mainstream therapies to sports performance to deal with the underlying issues that affect an athlete.

<sup>47</sup> There was a high degree of acceptance amongst the people I spoke to that an athlete centred approach was not only the right thing but also the best way to achieve performance.

<sup>48</sup> One coach described it as putting the athlete at the centre of a circle and then adding in the spokes of the wheel to provide the tools and support that athlete needs to perform to their best.

<sup>49</sup> An experienced high performance campaign planner described their approach as follows: “It is about achieving the twin goals of a better person (for example, be the best version of yourself that you can be) and the performance outcome (usually a medal).

An athlete centred approach requires all the different providers associated with that athlete's performance (physical, technical, tactical, mental) working in a connected and coordinated way with a common understanding of the strengths, weaknesses and work ons for that Elite Athlete.

Every Elite Athlete is different. Overall, the head coach, High Performance Manager or whoever is managing the environment needs to rely on all providers working together, making adjustments and constantly feeding back information on that athlete. The key is to communicate and agree the right path for, and in consultation with, that athlete. I was told that it will only work if the providers really know and understand the athlete and are working in unison in those areas of current need or focus.

I was told that a model is not player centric if the different providers are acting in isolation. Many of the people I spoke to recognised the risk that each provider believes that their area is the most important or can make the biggest difference to the Elite Athlete. The consequences for the athlete concerned can be severe; for example, if a trainer overtrains the athlete, then gains in this area are cancelled by injury or poor performance, which can ultimately lead to athlete disillusionment.

An example of an empowering approach is Elite Athletes earning the right to select their support teams and manage their own campaigns. Athletes with the experience and maturity to perform this role gain invaluable life skills as well as a real sense of ownership over their performance.<sup>50</sup>

The challenge for NSOs is to adopt and embed a whole of person and/or person first approach consistently, even at times when the immediate and overriding concern is a performance outcome. The starting point is a simple one: it is about caring for athletes and their wellbeing and the athletes themselves knowing the organisation cares. That is about actions, not words,<sup>51</sup> and is the building block on which a high performance 'people culture' can be built.<sup>52</sup>

Having an athlete centred approach does not necessarily entail prioritising in every situation an Elite Athlete's needs as a person over his or her needs as an athlete. What is required is informed decision making by Elite Athletes with each athlete being encouraged to think and plan beyond the immediate sporting horizon.

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*The goal is set by the athlete(s). I regularly check in, is that still the goal, how are we tracking, what new or different do we need to do? Ensuring that they have the support they need and that they are enjoying the process."*

<sup>50</sup> I was provided with many examples of where such an approach has benefited the Elite Athlete concerned both as a person and in terms of performance including medallists from the Rio Olympics in 2016. Clearly it is not affordable or necessarily desirable for every Elite Athlete to have their own bespoke campaign and there are other factors that impact the viability of this approach including the nature and requirements of the sport itself.

<sup>51</sup> As a leading coach explained to me: *"If you are genuinely concerned about player welfare, then don't talk about it. You do things that show you care; for example, saying to a player 'I am worried about your welfare' is pointless but to fly his wife and kids to a game or allow that player to stay at home for a couple of extra days to assist with family actually shows you care."*

<sup>52</sup> The importance of caring for athletes was expressed to me in many different ways with different examples, positive and negative. It can be summed up by the following saying, which came from a rugby league context: *"Players do not care what you know until they know that you care."*

In particular, the transition to life after sport is a challenge for even the well balanced and adjusted Elite Athlete. I heard many examples of the ways in which NSOs can encourage and assist Elite Athletes in this process.<sup>53</sup>

## Defining Success

Elite Athletes want and need to train to be able to perform at the highest level. It is in no one's interests to have a training regime that does not adequately prepare the Elite Athletes for the competition demands they will face.

That being said, there are limits as to what is acceptable no matter how willing the participant.<sup>54</sup> No one I spoke to thought it was acceptable for a high performance environment to produce champions if the by-product was an unacceptably high risk of that Elite Athlete developing, for example, mental or physical health issues later in life.<sup>55</sup>

There are differences of opinion as to where that 'unacceptably high' threshold sits and this needs discussion on a sport by sport basis.<sup>56</sup> I believe, however, that most Sporting Organisations, their participants and New Zealanders as a whole would not describe as successful a high performance sporting system that produces champion athletes that later in life wish that they had not won because of the problems they face after they have finished competing.<sup>57</sup>

Sporting Organisations need to have real clarity about their purpose and vision; that is, what is their reason for being, what they are trying to achieve? A sole focus on performance outcomes and/or a win at all costs mentality can and will cause harm to Elite Athletes. The most extreme recent international example of this occurring is US Gymnastics.<sup>58</sup> Another example of the extent to which players were prepared to go in order to win is the ball tampering incident involving Australian cricket.<sup>59</sup>

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<sup>53</sup> For example, an overseas Olympic champion athlete explained to me how she sat down and mapped out with her coach at the start of every year how she would study (and then later in her career work), given her training and competition commitments for that year. Both parties agreed how it would work and the athlete felt empowered and supported in terms of the formation of those arrangements. This athlete competed for 16 years at the elite level in her sport. For her, "*life outside of sport needed to be part of the performance conversation*".

<sup>54</sup> As one interviewee told me, Elite Athletes are not eggs that a Sporting Organisation can throw against a wall until it finds one that does not break.

<sup>55</sup> These can include depression, anxiety issues/disorders, body image issues, eating disorders, relationship difficulties, both acute while the Elite Athlete is active in sport and chronic longer term after the end of their careers.

<sup>56</sup> This discussion needs to factor in all the relevant issues including the reality that any activity carries risk and that the greatest risk to the average person's health is not playing sport but the consequences of not getting off the couch.

<sup>57</sup> I was told of examples where this was the case in New Zealand and overseas.

<sup>58</sup> A 'win at all costs' culture was institutionalised by two long-standing US gymnastics coaches and tacitly endorsed by the governing body. The culture got consistent results over a long period of time (41 Olympic medals) but caused serious physical and mental harm to young, vulnerable athletes; for example, young gymnasts were encouraged to train with broken bones. In addition, a trusted doctor sexually abused young gymnasts in this environment over a period of decades. The doctor is in prison, the Chief Executive and Board of US Gymnastics resigned, and the key recommendation of a review carried out in June 2017 was for a "*complete culture change permeating the entire organisation*".

<sup>59</sup> Three Australian players received lengthy bans and public condemnation following the use of sandpaper to alter the cricket ball to try to improve their prospects of winning a test match against South Africa in March 2018. The fallout is ongoing.

Sporting Organisations will benefit from seeking a deeper and richer understanding of what success looks like. In terms of high performance, rather than just counting the number of medals or trophies won, should this, for example, take into account what their Elite Athletes are able to say and do at the end of their sporting careers?<sup>60</sup> Should it take into account the quality of the athlete experience?<sup>61</sup>

Different sports have embraced and defined their purpose in different ways. For example, the Chiefs aim for their players to leave with more mana than when they arrived. The New Zealand Sevens women's team has a vision based on "leaving mana in our wake". New Zealand Cricket, the Major Associations and the New Zealand Cricket Players Association have just agreed a set of objectives for the Master Agreement (which sets out the framework for the men's professional cricket environment) where BLACKCAPS success is a by-product of achieving the other agreed priorities.<sup>62</sup>

Defining purpose is the point at which a Sporting Organisation's commitment to Elite Athlete rights and welfare can be really tested: as a body, are we really about the holistic development and treatment of our athletes or is that a slogan on the wall?<sup>63</sup>

Whatever the final decision made, it must be genuine<sup>64</sup> and it should be clearly communicated to all participants, including Elite Athletes, who can make informed decisions accordingly. No one benefits from a Sporting Organisation which is not clear about its purpose.

I heard many examples of the fickle nature of sport at the highest level.<sup>65</sup>

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<sup>60</sup> By way of example only, the Australian government's Sport 2030 plan has defined Olympic and Paralympic success more broadly than winning and it "must now also include the impact of athletes as role models, their engagement with the community, and delivering a respected system".

<sup>61</sup> I was told about Elite Athletes who have fulfilled their performance goal but were not happy prior to, during or after what should be their crowning moment and that, while it can be done, it is not the best way.

<sup>62</sup> "NZC, the Major Associations and the CPA have agreed that the shared objectives of this Master Agreement are to:

1. Develop and retain New Zealand's best cricketers;
2. Maximise revenue from the professional game of cricket;
3. Promote the game of cricket;
4. Provide an optimal high performance environment leading to strong Domestic Competitions and BLACKCAPS success on the world stage;
5. Prepare and educate Players on the requirements of professional cricket and for the transition to a successful life after cricket; and
6. Ensure a close working relationship between NZC, the Major Associations and the CPA."

<sup>63</sup> Nearly every Sporting Organisation I spoke to maintained they had an athlete centred high performance programme.

<sup>64</sup> As one interviewee said, "Athletes can smell bullshit. They know when a box is being ticked".

<sup>65</sup> Examples from the Rio Olympics 2016 include the:

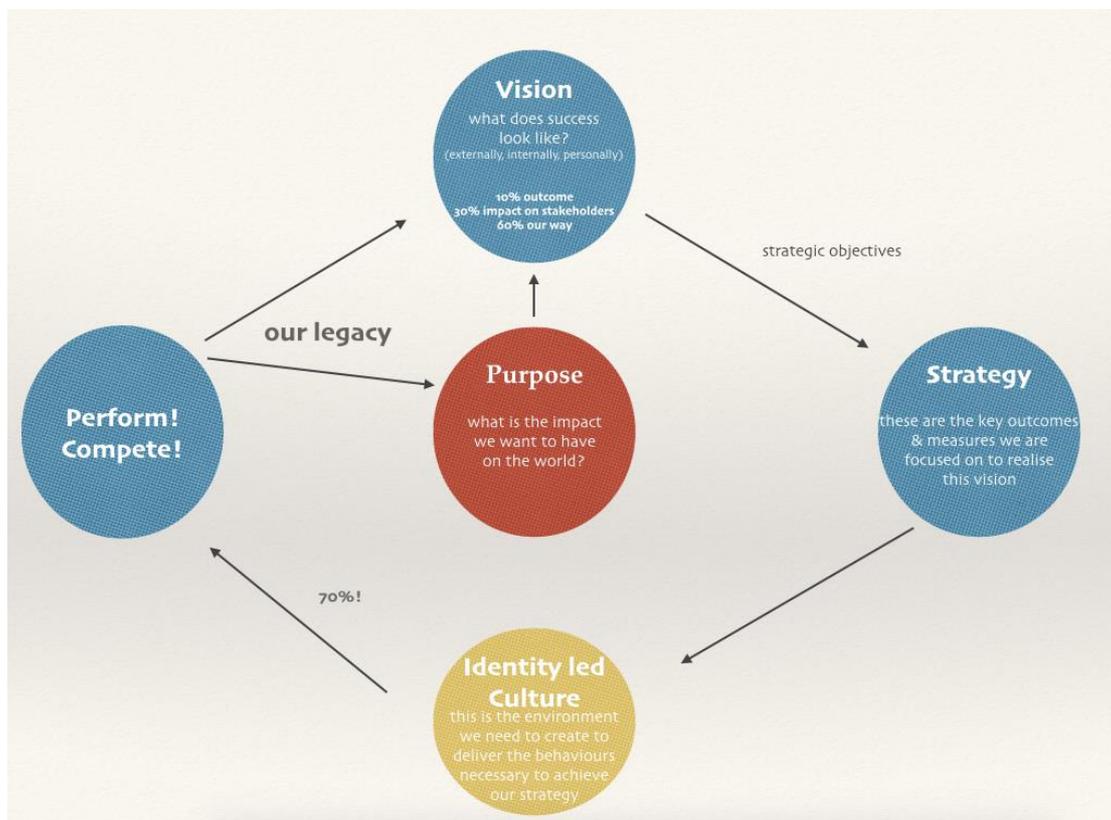
- New Zealand equestrian team coming fourth after Mark Todd, New Zealand's best rider, uncharacteristically dropped four rails in the final show jumping round. A clear round would have seen the team win gold. The next day the same horse and rider jumped clear in the individual competition; and
- men's Black Sticks being up by two goals in the quarterfinals, but Germany scored three goals in 4 minutes to win, the last goal with 1.5 seconds left on the clock.

I also heard many athletes say in different ways that success was about lining up on the start line knowing that you had done everything possible to win the race or contest. If that is achieved, failure is an outcome that can be lived with.

A Sporting Organisation should focus on enabling its Elite Athletes to perform to their potential. The outcome will be what it will be but, on this measure, Sporting Organisations have played their part if an Elite Athlete finishes a race or a match not just saying, but knowing, they did everything they could to be the best they could be.

### Importance of Culture

The graph below is a simple representation of the big picture context of team culture.<sup>66</sup>



Culture can be defined as the values, behaviours, beliefs and environments that shape people’s experience within a system. Many organisations (including Sporting Organisations) have agreed and written down their values but few seem to focus on aligning all they do with those values.

<sup>66</sup> Provided by Owen Eastwood, who works as a performance coach specialising in team culture and team dynamics. Owen is currently working with the England football team, South African cricket team and Montpellier Rugby, having previously worked with Manchester City, Scotland Rugby and the NZ Warriors.

Sporting Organisations need to determine their values and ensure these are lived by the organisation as a whole. A Sporting Organisation's culture should not permit or normalise unacceptable behaviour, particularly by those holding power or whose services the organisation wants to retain.

Most people I spoke to emphasised the importance of the environment or culture within a team.<sup>67</sup> A Sporting Organisation can have structures and process in place but how they work in practice will depend on the people, particularly the people in key positions, and the culture.

Issues relating to culture are further addressed in section 10 of the review.

### **Coach-Athlete Relationship**

Coaches have a huge impact on Elite Athletes. Coaches universally have passion, commitment and the drive for their Elite Athletes to succeed at the highest level. Not all coaches have, or are perceived as having, the skills or understanding to get the best out of their Elite Athletes and their behaviours can have a huge impact on their athletes' state of mind and wellbeing. I was told of many examples of the impact of coach behaviours on Elite Athletes.<sup>68</sup>

Some elite coaches continue to coach and behave in the way they were coached and treated years before. One style is based on a top down approach: the coach knows and tells, and the athlete listens and follows.<sup>69</sup> In some cases excuses are made for this type of coach's shortcomings to justify rather than address his or her communication or behavioural deficiencies, for example, 'he or she is not good with people'.

I was told that a system set on performance, not development, expects coaches to manage and develop relationships better than they have the skills or capability to do. In some cases, coaches are not supported in acquiring these skills and the assumption is wrongly made that they will know how to relate to Elite Athletes in the high pressure environment of high performance sport.

Having technical and tactical expertise is not enough to be a great coach. I heard examples of the positive impact of coaches based on their ability to understand and develop a productive working relationship with each different athlete.

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<sup>67</sup> Interviewees made comments like "culture is king" and "culture eats strategy for breakfast".

<sup>68</sup> For example, one champion young athlete in an individual sport gave written feedback to her NSO setting out reasons why her coach should not be appointed going forward. She told me that her views were dismissed on the basis she was too young and inexperienced to have an opinion. The same person was appointed as her coach for another 4 years and the problems continued. Whether the Sporting Organisation had good reasons to appoint the coach or not, the way the process was perceived to have been handled left the Elite Athlete, the person most affected by the decision, feeling unhappy and devalued. After 4 years the Elite Athlete's position was "if the coach is reappointed then I will quit". The coach was not reappointed. The Elite Athlete now takes comfort from the fact that those 4 years taught her resilience.

<sup>69</sup> For example, I was told that "anyone with a voice is punished and selectors have the discretion to do that. When there is real competition for places you do not want to say or do anything that might be interpreted badly by the coach or selectors".

I was told that at times it was more important for a coach not to talk or intervene. Coaching is not a one way knowledge transfer process. Coaches should learn and evolve alongside their athletes and other team support personnel.<sup>70</sup>

There is not a hard line between decisions that are or should be coach led and those that should be athlete led. I was told that the line depends on what is required to get the best outcomes in any particular situation and depends on a range of factors including the issue, the maturity and experience of the playing group,<sup>71</sup> and the overall interests of the athlete, team or group.<sup>72</sup> It is not about abdicating responsibility or group decision making on every issue.

What matters is that the coach or decision maker genuinely cares about the welfare of his or her players and is listening to their views. The coach must also live the values and exhibit the behaviours expected of others.<sup>73</sup>

In some instances, these coaching methods, or the way they are communicated, are no longer appropriate or acceptable. They are also likely not to be the most effective way to achieve performance, particularly for a new and younger generation of athlete. Being effective as a coach is not about being liked or being soft on athletes<sup>74</sup> but understanding how to enable them to perform to their best.<sup>75</sup>

The issue for the New Zealand high performance system is that if the coach is producing winning performances because of (or in spite of) his or her methods, then historically that coach has been deemed successful and his or her methods can escape scrutiny. It is when there are poor performances that questions are asked and the truth is uncovered. I have heard examples of this across different sports.

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<sup>70</sup> One long-standing Elite Athlete spoke about how her relationship with her coach had changed over time as she took more control over her preparation and her programme, which required a realigning of how they performed their respective roles. That required honest and open communication, and a willingness to listen and adapt.

<sup>71</sup> The review of the Silver Ferns' 2018 Commonwealth Games campaign found that *"The Head Coach was strongly committed to developing a player led culture in which the playing group took ownership for their on and off court decision making. This philosophy was reflected in many of the coach's actions, including her coaching style. The Head Coach moved the team away from a very structured approach to one where players needed to develop game plans and problem solving. For many elite teams this philosophy can be extremely effective. Unfortunately, that philosophy did not connect with the team. Given the team's lack of experience and depth of leadership in the panels view, this team needed clearer direction, structure and boundaries, on and off the court"*.

<sup>72</sup> I was told that the role of coaches is to understand what players are driven by and what their needs are; for example, one player might need life balance, another greater focus. A formula driven coaching model does not work in a decision making sport.

<sup>73</sup> I was provided with examples where this occurs and does not occur. One coach told me that creating the right culture in his environment was not complex: he makes decisions based on how he would want to be treated in that situation and on what he would expect others to say or do in the same or similar circumstances.

<sup>74</sup> I was told that you need alignment between athlete and coach, but alignment is not the same as harmony: *"You need to be able to disagree, have robust conversations; a degree of tension is both normal and healthy. I have seen examples of athletes and coaches being too nice to each other and that holds back performance. I have also seen examples of coaches over managing and over controlling. Ego can be the enemy of performance."*

<sup>75</sup> One former Elite Athlete emphasised the need to listen to athletes and *"yes we need to manage extremes in terms of coaching styles and behaviours but must not swing too far the other way to kid gloves and mediocrity. Work ethic is a core part of what an athlete must have"*.

It should not be acceptable going forward. Success on the field should not prevent scrutiny and accountability off it.

NSOs have to take responsibility for setting the coach's key performance indicators (KPIs) and providing him or her with the support, skills and assistance needed to achieve those KPIs.<sup>76</sup> In many cases, this will require support and assistance in terms of how best to communicate, support and build effective relationships with their Elite Athletes. NSOs cannot just set performance goals and then leave the coach and his or her team to their own devices, whatever the on-field results. NSOs must properly oversee, manage and, if necessary, intervene in the high performance environments operating within their sports.<sup>77</sup>

Appointing a coach is not a popularity contest. The views of Elite Athletes should not necessarily be determinative.<sup>78</sup> They should, however, be consulted as part of the appointment process and their views given due weight and consideration by the ultimate decision maker, whether that be the coach, the High Performance Manager, the CEO or the Board of the NSO.

By way of example, NZ Cricket recently publicly praised the contributions made by both a former and a current player to the recent process it followed when appointing the BLACKCAPS head coach. A member of the NZ Cricket appointments panel that I spoke to made it clear that the players' views were not determinative but were of immense value. There was no perceived loss of control by the NSO but instead a shared sense of purpose, with both the players and the NSO working together to achieve the right outcome.

### **Silence is Compliance**

Psychological safety is about feeling able to be your real self.<sup>79</sup> While hard to measure, it is a concept that encompasses a person's sense of belonging, belief, purpose, security, status and/or autonomy.

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<sup>76</sup> By way of example, NZ Cricket's men's and women's national and domestic coaches' KPIs will be weighted 18% on winning, 27.3% on players' personal development and wellbeing, 27.3% on campaign planning, and 27.3% on developing players towards peak events or national teams. This whole performance management system supports and is guided by an underlying principle of learning. NZ Cricket's goal is to produce heroes in society that are well-rounded role models in all areas of life.

<sup>77</sup> This will require consideration of how to effectively review the coach's performance including peer review if at all possible.

<sup>78</sup> I was told that the more individualised the sport, the more important the match between athlete and coach. There is a need for NSOs to listen to athletes in terms of coach matching but only when the athlete has had experience of winning and knows what it takes for them to achieve to the standard required.

<sup>79</sup> A more formal definition is "*being able to show and employ oneself without fear of negative consequences of self-image, status or career*".

In a sporting context it is Elite Athletes feeling able to speak up and express their thoughts or ideas even where they reflect a challenge to the status quo thinking. This is important for high performance sporting environments, which risk becoming too inward looking and insular, particularly when there is one dominant coaching philosophy or approach to high performance or where the environment is not an open or inclusive one.

Many of the Sporting Organisations I spoke to believe they have an environment where Elite Athletes can speak up and are listened to when they do. All have forums, groups or processes where concerns can be raised by or on behalf of an athlete. The best of them focus on creating an environment where silence is compliance or ‘the behaviour we walk past is the behaviour we condone’.

Recent events demonstrate, however, that no Sporting Organisation should be resting on their laurels: having processes or forums in place is meaningless if Elite Athletes are not willing, or do not feel able, to use them. While leaders may believe they have an environment where people can speak up, the realities of that environment can be very different, whether in sporting or in other environments.<sup>80</sup>

Selection for many Elite Athletes is everything. You can’t achieve your performance goals unless you are first picked for the team. Elite Athletes do not want to jeopardise their chances of selection by getting offside with the coach or the senior administrators in the sport. Elite Athletes who have won Olympic medals or World Championships may have the status and standing to be more vocal but athletes on the fringe of selection often do not want to say or do anything that will draw attention to themselves in a negative way. This is a significant reason why Elite Athletes do not speak up.<sup>81</sup>

Equally, Elite Athletes who are dropped often have no way to express their frustration or confusion other than potentially through legal channels. Those athletes are also inevitably conscious that if they vigorously dispute their non-selection, they may never be selected again.

Sporting Organisations have to create and maintain an environment where athletes are able to have honest and authentic conversations and raise issues of concern without fear of retribution. That is not universally the case with New Zealand high performance sport currently.

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<sup>80</sup> For example Russell McVeagh’s statement dated 5 July 2018 following an independent review of the law firm’s culture: “*We believed we had a speak out culture and it is clear from this Review that we were misguided in this belief... We are saddened that many of our people, across both our Auckland and Wellington offices, have not felt able to speak out and in some instances where our people have, best practice has not been followed.*” Following a survey of its members on the safety of lawyers in their workplaces, with a focus on sexual harassment and bullying, the president of the New Zealand Law Society wrote to all its members on 30 May 2018 acknowledging that the issues were industry wide: “*we are failing to keep our people safe, we are compromising their human rights and we are failing to treat all people with respect and consideration for the concepts of justice and equality.*” At the time of writing this review, the Australian Law Society is also surveying its members in relation to these concerns.

<sup>81</sup> Other reasons include not wanting to cause trouble, a perceived inability to bring about change and a lack of knowledge as to where to go to make a complaint or report poor behaviour.

## **Access to Independent Advice**

In high performance sport, nearly all participants have an interest in, or are after something from, the Elite Athlete.

The Sporting Organisation wants to see a return on its investment, in essence, benefits to flow for the sport and community as a whole from Elite Athletes performing on the world stage.

Coaching and support personnel, many of whom are on short or fixed term agreements, invest a huge amount of time, emotion and effort in the Elite Athletes they coach. They are under pressure and are accountable for results. They naturally want to see both their own and the Elite Athletes' hard work rewarded by successful performances, which in turn will enhance both the coach's and the Elite Athletes' career prospects.

Agents or managers, if the Elite Athlete has one, want to be able to do more, and better, deals for the athlete, capitalising on their profile and success.

Family members or friends may only want the best for the Elite Athlete but may not have the skills, experience or perspective to give the Elite Athlete the advice or support they may need.

While all of these participants may put their own interests aside and truly act in the best interests of the Elite Athlete, the question remains: who can best provide Elite Athletes with independent advice and support if and when they need it?

## **The Best are Focused on Getting Better**

Many interviewees held up the All Blacks as the example of what can be achieved in terms of growing people and delivering performance. New Zealand Rugby has had its challenges<sup>82</sup> but has vowed to lead in this area and has publicly committed to its quest to do so.

While having winning teams is a primary focus, so is the welfare of its people, an area it devotes considerable time and resource to. For example, the All Blacks are continually focused on creating the environment that allows their players to grow and thrive. They employ people full time to concentrate on achieving that goal.<sup>83</sup>

I was told that the All Blacks involve players in the decision making process because:

- a) their experience is that when players are involved in the planning and direction of the team they are engaged in the process and that leads to increased buy in and energy in their performance; and

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<sup>82</sup> The issues leading to NZ Rugby's Respect and Responsibility review are well documented.

<sup>83</sup> Led by Gilbert Enoka, All Blacks Manager, Leadership, who views his role as being about making a difference to players as human beings.

- b) players are the ones on the park making decisions so need to be making decisions off the field to make the right decisions on the field. The All Blacks want players to be able to identify for themselves if, for example, there is an issue with goal kicking and make adjustments accordingly.

The All Blacks' style of coaching is focused on what is effective, not what makes the player feel good about themselves. Experience has shown them that a clear, uncluttered player led approach is effective and a coach dominated, detail focused approach is not.

New Zealand Rugby believes its relationship with its players is a source of competitive advantage against other nations, many of whom have greater playing numbers and resources than New Zealand. So, if the All Blacks are among the best in New Zealand and the All Blacks are focused on getting better, what does that mean for other sports?

Clearly, other sports do not have the resource rugby has and resource can make a real difference in terms of Elite Athlete welfare. Much can be achieved, however, which is not dependent on resource. For example, I was told of five things that shape culture that don't cost any money, a sport is in charge of and a sport does not need anyone's permission to do:

1. language;
2. conversation – quality and tone;
3. questions – the type you ask;
4. stories – the power of these; and
5. measures – how do we know?

NSOs, particularly those that lack resources, should be exploring how to maximise ways of taking advantage of these and other ways of shaping their culture.

## 7. ELITE ATHLETES' RIGHTS

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### Human Rights

Sporting Organisations have a responsibility to all the athletes within their care. The extent of that responsibility will depend on the circumstances of each athlete and the nature of the sport they compete in.

The question is, from a Sporting Organisation's perspective, what is the nature and scope of the rights of, and their duty of care to, an Elite Athlete in New Zealand?

### International Law

It is important for Sporting Organisations to be aware of developments in international law relating to human rights, given the focus on embedding a human rights approach being taken by many international sports organisations like the International Olympic Committee (IOC) and FIFA and the emergence of athlete charters including the World Players Association's Universal Declaration of Player Rights.<sup>84</sup>

A country that signs and ratifies a treaty is bound to its terms under international law. New Zealand voted in favour of the Universal Declaration of Human Rights and has ratified almost all of the major international treaties and conventions relating to human rights. As such New Zealand is bound to implement its obligations as a matter of international law. Such treaties do not alter or defeat the clear meaning of a statute but the obligations within them influence domestic law (and have direct impact once incorporated into domestic law).<sup>85</sup>

A private body such as an NSO is not directly bound by international treaties unless or until they are incorporated into domestic law. Where they are not incorporated into domestic law, however, a decision maker should (and a court will) consider these international obligations when interpreting relevant legislation or considering the scope of relevant policies or obligations.<sup>86</sup>

Article 1 of the UNESCO Charter<sup>87</sup> provides that the practice of physical education, physical activity and sport is a fundamental right for all.

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<sup>84</sup> Published on 14 December 2017. See: <https://www.uniglobalunion.org/news/world-players-association-launches-universal-declaration-player-rights>

<sup>85</sup> Philip A Joseph, *Constitutional and Administrative Law in New Zealand* (4th ed, Brookers, Wellington, 2014) para 15.6.7.

<sup>86</sup> Cabinet process requires proposed legislation to be vetted for compliance with international law and courts will interpret legislation consistently with international law (as far as reasonable) (Joseph, above, para 15.6.7).

<sup>87</sup> United Nations Educational, Scientific and Cultural Organization's (UNESCO's) International Charter of Physical Education, Physical Activity and Sport. The original Charter was adopted by UNESCO in 1978 and revised in November 2015. The Charter has been adopted unanimously by UNESCO's General Conference, which brings together all Member States of UNESCO,

The UNESCO Charter also sets out universal defining principles including that all stakeholders must participate in creating a strategic vision for sport, including sport professionals.<sup>88</sup>

Various relevant international treaties<sup>89</sup> state that everyone, including professional athletes, have the right to:

- freedom of association;
- form trade unions and to collectively bargain;
- work and the free choice of employment;
- equal pay for equal work; and
- be protected against discrimination.

Where Elite Athletes are employees, the UNESCO Charter requires that any employer in the field of physical education, physical activity or sport or related areas must pay due consideration to the psychological and physical health of their employees, including professional athletes.<sup>90</sup>

### **New Zealand Law**

Rights become part of New Zealand law through domestic legislation such as the Bill of Rights Act 1990 and the Human Rights Act 1993.

Human rights under the Bill of Rights Act include the right to freedom of expression, the right to freedom of association and the right to be free from discrimination.<sup>91</sup>

There is a variety of other legislation which impacts on Elite Athlete rights including in relation to health and safety, rights as an employee and whistle blowing.

A brief summary of some of the relevant statutes, together with a summary of the Olympic Charter, the IOC and the World Anti-Doping Agency (WADA) Athlete Charters and the World Players Association's Charter, is set out in Appendix 3.

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including New Zealand. The Charter is a non-binding international standard setting instrument. As such, it is not formally ratified at national level.

<sup>88</sup> Other principles include:

- The freedom to develop through sport must be supported by all governmental, sporting and educational institutions.
- Sport must be inclusive and promote equal opportunities for all.
- Every human being must have the opportunity to attain a level of achievement through sport.
- Policy decisions must be based on sound factual evidence.
- Good governance must be implemented.

<sup>89</sup> The critical instruments include the: Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; and the ILO Declaration on Fundamental Principles and Rights at Work (not all the covenants of which have been ratified by New Zealand).

<sup>90</sup> Article 10.5.

<sup>91</sup> Discrimination occurs where a person is treated unfairly or less favourably than another person in the same or similar circumstances.

## **Contractors or Employees?**

Elite Athletes contracted by their NSO are typically either employees or contractors. An employee has a 'contract of service' with an employer, while a contractor has a 'contract for services' with the principal.

The Employment Relations Act 2000 (ERA) covers employees but not contractors. The ERA is based on a mutual duty of good faith.<sup>92</sup> The ERA sets out procedures to deal with employment relationship problems, including the right to pursue a personal grievance claim. The ERA also promotes collective bargaining, acknowledging that there is an "inherent inequality of power in employment relationships".

The true nature of the relationship between an NSO and an Elite Athlete is important because, for example, it affects entitlements to leave, minimum wage, obligations to deduct or pay tax and ACC levies, entitlement to KiwiSaver and access to personal grievance procedures.

When determining whether a person is a contractor or employee, the court will look at the true nature of the relationship between the parties and all relevant factors.<sup>93</sup>

## **What Do their Elite Athlete Rights Mean in Practice?**

In summary:

1. all Elite Athletes have human rights;
2. there is a broad range of New Zealand legislation that applies to all Elite Athletes; and
3. there is additional New Zealand legislation that applies only to Elite Athletes who are employees.

All Elite Athletes, regardless of their contractual status, have the right not to be harassed or discriminated against, to have their privacy protected and rights to own and use their intellectual property.

Elite Athletes who are employed by their NSO have many additional rights including the right to organise and collectively bargain, to be selected on merit, and to be treated fairly and in good faith. Those same rights do not apply if, as is often the case in New Zealand, the Elite Athlete is engaged as a contractor.

The question is whether many of those same rights do or should apply to all Elite Athletes. For example, should every Elite Athlete, regardless of whether or not they are an employee, be entitled to fair treatment from their NSO, to be dealt with in good faith and not to be unreasonably or unfairly terminated?

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<sup>92</sup> The government at the time the ERA was introduced stated that it is "*based on the understanding that employment is a human relationship involving issues of mutual trust, confidence and fair dealing, and is not simply a contractual, economic exchange*".

<sup>93</sup> The Employment Court 'must consider all relevant matters' if there is any doubt as to the nature of the relationship. This includes the intention of the parties when entering into the agreement, the degree of control over the person, the level of integration into the organisation and the nature of the work they perform.

In my view, an Elite Athlete's status as a contractor or an employee should not distinguish in practice the standard of care or treatment that they are provided. I reach this view for a number of reasons including that:

1. the legal protections offered to employees derive from the inherent inequality in the relationship between employer and employee. In reality, contracted athletes are in exactly the same position and deserve the same protections and fair treatment;
2. there is, in many instances, a fine line between whether an Elite Athlete is, in reality, an employee rather than a contractor and Elite Athletes who are designated as contractors can challenge their status and assert that they are, in reality, employees and should be treated as such; and
3. developments in international public law and the growth in Players Associations and collective bargaining worldwide are evidence of a move towards providing Elite Athletes with equivalent rights to employees, whatever their actual legal status.

NSOs should not, in my view, rely on the fact that the agreements with most of their Elite Athletes state they are contractors as justification for treating them in a different way from, or to a lesser standard than, athletes who are employees. In practice, all Elite Athletes should, in my view, be treated according to standards equivalent to those that apply to employees. This requires treating Elite Athletes fairly and in good faith, recognising and supporting their right to organise themselves and collectively bargain, and providing remedies for grievances. In my view, this is the right approach morally, it will extract best performance, and, in some instances, it may well also be the correct legal approach.

## 8. ELITE ATHLETES' WELFARE

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Elite Athlete welfare is a broad concept. It encompasses the overall health, safety and wellbeing of an Elite Athlete.

One starting point is that Elite Athletes should be better off from representing their country at the elite level.<sup>94</sup> Another looks at the quality of their experience. What Elite Athletes' needs are and how they can be assessed as 'better off' or as having had a positive experience are discussed in further detail below.

### Financial

Elite Athletes in sports which receive commercial support can make a living out of their sport and, for the best, a very good living. However, the reality is that the majority of Elite Athletes, particularly in HPSNZ targeted sports, struggle to be able to afford to continue to pursue their sporting dream.<sup>95</sup>

To be able to compete, Elite Athletes need to be in a position to access the training facilities they need, pay rent and have food on the table. It is ironic that the primary source of funding for many Elite Athletes in HPSNZ targeted sports is their PEG when, for many, this barely covers living costs yet alone the costs of enhancing their performance.<sup>96</sup>

It is important to note that some of the Elite Athletes I spoke to felt both lucky and fortunate to receive funding at all. These athletes were appreciative of the assistance they received from HPSNZ to live, to study, to travel and to compete. To be supported in doing something they love was the ultimate outcome for them. Others found the uncertainty of funding difficult but were grateful to have any support.<sup>97</sup> However, this does not alter the fact that enhanced performance can be compromised by a lack of funding.

One of HPSNZ's investment principles is that sports and campaigns 'earn the right' to investment. Most Elite Athletes described trying to earn that right by achieving elite status as their most difficult time financially.

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<sup>94</sup> This concept is referred to in Sport Australia's 2030 report.

<sup>95</sup> Some of the extreme examples included Elite Athletes sleeping on camp stretchers and not being able to afford petrol to get to training.

<sup>96</sup> One Elite Athlete suggested it should be called a 'living allowance'. In addition to their PEGs, carded athletes receive a range of support services and funding to cover their training and competition costs. The overall investment in each Elite Athlete exceeds the value of their PEGs. HPSNZ does not mean test athletes, place any restrictions on their ability to earn revenue or look to generate any commercial revenue off the back of their success.

<sup>97</sup> For example: "[Annual funding] had a huge impact. I could never hire a coach, trainer, physio for more than a season. It completely undermines long term planning but at the same time it is what it is, you deal with it and try to plan around it. At least we were getting a little bit of funding."

While NSOs and HPSNZ have various initiatives in place to try to fund and support emerging athletes, the reality is that the line has to be drawn somewhere. These athletes are then in a difficult position: they want to commit to their sport in order to break through to the elite level but may not be able to afford to do so.<sup>98</sup>

Sporting Organisations also struggle to make ends meet. For some, the constant challenge is to balance the needs of Elite Athletes with the needs of other participants, particularly at a grass roots level. Some Sporting Organisations rely solely on HPSNZ funding for their high performance programme – if cuts are made to the funding then cuts need to be made to the programme.

In the absence of significant new sources of funding appearing in the future, hard decisions need to be made.<sup>99</sup> What is not fair or sustainable, in my view, is for a sport to mandate Elite Athletes to meet certain requirements as a pre-condition to selection<sup>100</sup> if they are not funded accordingly or provided with a realistic opportunity to earn an income, for example, by having time during the day to work on either a full time or part time basis.

The situation comes to a head when a full time coach needs greater access to volunteer or part time athletes. The coach becomes frustrated because he or she cannot achieve the performance lift required to compete with the competition (who often do have full time access to their Elite Athletes) without that level of access but the NSO cannot afford to provide the level of support they need to be dedicated to their sport full time. So, pressure is placed on the athlete to make him/herself available for more training and more travel, for little or no additional compensation. Athlete welfare is compromised as a consequence.

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<sup>98</sup> I was told by one interviewee that the system to get to the top was perhaps not fair but that it is also what makes New Zealanders competitors – you have to be tough and fight your way to the top to make it. While it would be good to make the fight easy and to get more people involved in the sport, you don't want to lose the toughness and self-reliance current competitors have. *"It is what shapes us."* Another described having an equipment malfunction that led to finishing outside the medals and all funding being cut. The athlete had delivered over a long period of time but those performances were not taken into account. He felt like he had been *"thrown under a bus"*.

<sup>99</sup> An alternative view is that the funding of high performance sport should be derived on the basis of the needs of participants when weighed against the benefits generated, for example, health, participation, inspiring young people, national pride etc. It should not be an approach based on 'this is what we can afford, make it work' because, in terms of Elite Athletes, such an approach creates more risk around people already in a vulnerable situation. The high performance system should adequately resource and support the young people it asks or expects to dedicate themselves to delivering world class performances.

<sup>100</sup> For example, having to relocate to a central training base or training during the working day for large periods of the year.

## Health and Safety

### *NSO Responsibility*

While it may not be the ultimate rule maker in its sport, an NSO as an employer and/or the custodian of their game in New Zealand has legal, moral and ethical<sup>101</sup> duties to take all reasonably practical measures to reduce the risk of injury for participants (including Elite Athletes) and/or to educate and inform participants of the risks of receiving such an injury.<sup>102</sup>

Sporting Organisations need to be aware that their duty to protect the health of their participants extends to their mental health as well as any physical injuries or issues. So if, for example, an Elite Athlete burns out, or suffers from depression or some other form of mental illness as a result of their experiences within their sport, then, in theory, that could create a legal liability under New Zealand Health and Safety legislation.

Sporting Organisations should know that mental health is a serious issue, that Elite Athletes suffer from mental health illnesses and that the consequences can be serious.<sup>103</sup> Sporting Organisations need to be ensuring that the same educational, treatment and other measures are in place in respect of mental health issues as is the case for physical health.

High performance sport is a paradox. On the one hand, NSOs are responsible for protecting the health of their participants. On the other, there are times when Elite Athletes have to compete with an injury. The challenge is to know where the line is and NSOs, coaches and the athletes themselves rightly rely on the health professionals to assist them in this regard. I was told by a leading doctor that making these hard calls comes down to experience and judgement. Trust in the health professionals plays a big part.<sup>104</sup>

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<sup>101</sup> In Canada, for example, concussion falls under the policy domain of Sports Ethics and is seen as an integrity issue along with doping and match fixing.

<sup>102</sup> In terms of specific initiatives, it is for each NSO to assess which specific injury education, management or prevention initiatives should be prioritised over others and what level of resources is required to ensure effective implementation. It is important that this assessment is constantly re-evaluated as new information comes to hand. By way of example only, overtraining is an issue for most sports, with the consequences potentially severe, particularly when combined with not eating enough. In females the phenomenon is known as Relative Energy Deficiency in Sport (REDs) and Athletics NZ is leading a campaign in New Zealand to raise awareness of the causes and consequences of REDs in New Zealand.

<sup>103</sup> To use an international example, in January 2018 Michael Phelps revealed he first contemplated suicide after the Athens 2004 Olympics and that he only sought professional help following the London Olympics in 2012 after reaching an 'all-time low'. He went on to compete and win medals at the Rio Olympics in 2016 but has been open about his mental health issues since his retirement.

<sup>104</sup> One leading player described his team doctor in a media interview as follows: "*She has a great understanding and feel for what is right. You know she'll do the right thing and it's great to have that trust in her. As a player, she knew when to tell you to toughen up and carry on, and when it was time to come off. She would never put someone in harm's way, but as an athlete there are also times when you just have to carry on.*"

Claims have been made overseas by athletes that an NSO has breached their duty of care to that athlete in terms of an injury suffered by that athlete. While each case is decided on its merits, these cases show a trend of courts inferring an increased responsibility on governing bodies.<sup>105</sup>

There are plenty of examples of Elite Athletes who have put their health at risk through their pursuit of their sport. Clearly the athletes themselves have a responsibility in this regard<sup>106</sup> but so do the coaching personnel and the sport itself. Education and checks and balances need to be in place. Governing bodies, as opposed to participants, are in the best position to monitor trends in their sport and to make changes to their rules and processes in light of the state of evolving science and research. This should be a priority.<sup>107</sup>

The extent of the duty of care to Elite Athletes and how the NSO discharges those duties will depend on the structure and nature of each high performance environment. Some NSOs have a very structured approach.<sup>108</sup> Other NSOs rely heavily on the core members of an individual Elite Athlete's support team, particularly in circumstances where the athlete is training and/or competing in a different location from the NSO.

But for some NSOs, physical or mental injuries to Elite Athletes can also be viewed as a direct threat to the ongoing funding of that sport because of the impact these injuries could have on ultimate performance outcomes.

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<sup>105</sup> The learnings for NSOs from these cases include:

- Take proactive steps to implement preventative measures (such as rule modifications) and warn participants of the risks associated with the game.
- Do not attempt to down-play, suppress or conceal any data or research which may be perceived to be adverse to their interests.
- Take reasonable care to protect the safety of participants in sport and ensure their rules reflect the state of medical knowledge and awareness of risks at the time.
- Focus on education and research (and take steps where possible to ensure the independence and validity of the research findings).
- Participants acting outside the laws of the game face potential liability.

<sup>106</sup> For example, to report injuries and follow up rather than disregard medical advice. A former rugby league international disclosed the way players in the past have avoided being ruled out for concussion by under-performing in the baseline test: *"The problem with the test is that players can manipulate it by under-performing so that later if you have a head knock and you have to beat it you normally can. In my league days the boys all beat the test and everyone kept on playing. In the back of your mind you are aware of the dangers, but you are paid to get out there and play and you want to play. You never think anything bad is going to happen to you. So you just do it."*

<sup>107</sup> For example, player welfare is World Rugby's number one strategic priority and the number one agenda item at all World Rugby Executive, Council and Rugby Committee meetings. World Rugby has recently done a detailed, evidence based review of every documented in-game head injury assessment to find out the causes. The results show the height of the tackler is a factor, so World Rugby is now trialling alternative rules requiring the tackler to bend at the waist as a consequence. While not all may agree with the solution, it is an example of how a governing body is using an evidence based approach to changing the laws of the game to promote player safety.

<sup>108</sup> For example, each NRL Club has a Wellbeing committee that consists of a Board member, senior administrator, senior coaching staff member, wellbeing manager and a player. Regular meetings are set up to monitor the wellbeing of the management and playing group.

## *Athletes with a Disability*

In terms of athlete welfare, there are additional issues that relate to athletes with disabilities, particularly in relation to their right to participate in safe sport.<sup>109</sup> I was informed that an issue some athletes with a disability face is the long term health impact of using their equipment; for example, what long term damage is a disabled runner on blades doing to his or her legs? In addition, while disabled athletes are subject to the same doping rules and TUEs as able bodied athletes, unique issues may arise relating to their disability.<sup>110</sup>

Disabled athletes generally have the same overall welfare needs as able bodied athletes but may well have additional issues or additional requirements that need to be met depending on the nature of their disability. There is a wide range of disabilities<sup>111</sup> and what are simple matters for an able bodied athlete can be complex and stressful for a disabled athlete, for example, the logistics of transport and travel for wheelchair and visually impaired athletes.<sup>112</sup>

Every Elite Athlete's disability impacts on their performance in a different way so it is critical to the success of para sport that disabled athletes are classified fairly and independently so they are competing on an equal level.<sup>113</sup> The issue is the subjective nature of the assessment and the reality that each category of classification contains a range of different disabilities. This is also an important issue for the integrity of para sport given the potential for athletes to intentionally misrepresent the nature of their disability or the effect of their impairment.<sup>114</sup> There is an increasing incentive to do so as para sport increases in popularity and profile.<sup>115</sup>

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<sup>109</sup> "...specific vulnerabilities to non-accidental violence or intentional harm for athletes with disabilities relate to (1) making uninformed assumptions about the care needs of athletes, (2) exploiting the athletes' dependence on personal care (eg, communication requirements, travel requirements and competition logistics), and (3) blurring of the roles and responsibilities in the coach-athlete relationship" ('IOC Consensus Statement: Harassment and abuse (non-accidental violence) in sport', 2016).

<sup>110</sup> For example, a paralysed athlete will not feel pain in their legs, but pain may stimulate or enhance performance. There have also been examples of athletes injecting urine back into their system; this can be a stimulant but is very painful, which is a barrier to able bodied athletes doing it.

<sup>111</sup> For example, amputation, cerebral palsy, brain injuries, visually impaired, tetraplegic and paraplegic injuries.

<sup>112</sup> For example, I was told that wheelchair athletes require assistance for tasks like accessing food from a buffet given the layout of most hotels. The cost of taxis means getting to and from training is a challenge for a visually impaired cyclist if there is no public transport available.

<sup>113</sup> For example, swimming has 10 categories of physical impairment, three of visual impairment and one of intellectual impairment.

<sup>114</sup> The most extreme example of this type of cheating was the Spanish Paralympic basketball team, who were stripped of their gold medals at the Sydney Olympics in 2000 after 10 members of their team were found to have no intellectual handicap.

<sup>115</sup> For example, the gold medal time for the women's 100m freestyle at the Rio Olympic Games in 2016 in the S8 category would have placed that athlete sixth if she had been competing in the S9 category.

## *Psychological Safety and Mental Health*

Safety is more than just the physical health and safety of the athletes. It also includes their psychological safety and mental health. Exposure to an abusive elite sport culture can lead to a range of mental health difficulties.<sup>116</sup>

Psychological safety reflects an athlete's sense of belonging, belief, purpose, security, status and/or autonomy. A psychologically safe athlete is one that is more likely to challenge, and to speak up and stand up for themselves.<sup>117</sup>

I was told that high performance sport is a (psychologically) unsafe place, where an Elite Athlete must be able to perform under pressure and deal with losses, poor performance and non-selection. If an Elite Athlete is new to a team or group, he or she can be anxious, which can affect cognitive decision making, generate tunnel vision and create self-doubt. There is no way of removing that pressure, but a good environment will alleviate this anxiety significantly by creating a sense of belonging and trust (you are worthy of being here) so that rather than feel inhibited the athlete is able to be themselves and express their talent under pressure.<sup>118</sup>

A total focus on performance outcomes can also inhibit performance. I was told that if success becomes all-consuming then it can define the Elite Athlete and become directly related to their identity. The thought of not achieving that success is not acceptable and that can result in habits of fear, carefulness and conservatism, which are not conducive to performance. Conversely, when the Elite Athlete is freed up from the constraint of outcomes, they become free to tap into their potential, in some cases in ways they did not know existed.

Mental health covers a wide range of issues, from performance anxiety to depression to other mental illnesses. In a 2016 study HPSNZ identified that 21% of carded New Zealand athletes presented with symptoms consistent with depression,<sup>119</sup> and that this percentage was highest in athletes under 25 years of age competing in an individual sport, and in those contemplating retirement.<sup>120</sup>

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<sup>116</sup> 'IOC Consensus Statement: Harassment and abuse (non-accidental violence) in sport', 2016.

<sup>117</sup> I was told of an overseas example of a coach deciding the tactics for a competitor before a race and, while the athlete did not agree with those tactics, the athlete did not feel able to disagree or to stand up to that coach.

<sup>118</sup> I was told that the most important thing for young athletes coming into elite sport "*is recognising that they are moving into the fourth standard deviation... the top .1% of the population, and to exist here – train and perform and compete here – is really, really tough... those with a secure identity and maturity understand this and rejoice in the 'pressure' they find here*".

<sup>119</sup> 'SHARP – Sports mental Health Awareness Research Project: Prevalence and risk factors of depressive symptoms and life stress in elite athletes' (Beable et al, 2017). The study found that reported life stressors were higher in females, individual sports, those in partial employment and in a centralised programme.

<sup>120</sup> A leading sports psychologist who has worked across a range of sports in New Zealand estimates that roughly half of the 21% might occur anyway (for example, through genetics or trauma) regardless of environment and roughly half might have underlying mental health concerns triggered or exasperated by the pressures of the high performance environment. The prevalence of mental health issues does not mean that communication cannot be direct or hard hitting, but just needs to consider psychological health in terms of who it is delivered to and how it is delivered.

Other international studies have shown varying rates.<sup>121</sup> Some of these conditions may arise from factors outside sport but in many cases they will be linked to an Elite Athlete's sporting endeavours.

Some sports have sought to destigmatise mental health.<sup>122</sup> This can be done through good awareness programmes<sup>123</sup> and a confidential place athletes can go to get the help they need.<sup>124</sup> Coaches and other support personnel also need to be trained to be aware of the signs an athlete is suffering and how to respond. Leading athletes sharing their experiences also have assisted to raise awareness.<sup>125</sup> Importantly, even if an NSO facilitates the treatment, it does not have an automatic right to know or see the information or diagnosis.<sup>126</sup>

### *Coach Relationship*

The Elite Athletes I spoke to recounted positive coaching experiences and ways in which their coach had made a difference to them or their team. I was also told about negative coaching experiences or behaviours and the coach's lack of accountability when these occurred.<sup>127</sup> It is not acceptable for a coach or other leader to be permitted to act or behave in inappropriate ways even if they are achieving on-field results.<sup>128</sup>

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<sup>121</sup> By way of example, Sport Australia's 2030 plan refers to a 2014 study of elite Australian athletes where more than 46% of athletes were experiencing symptoms of at least one of the mental health problems assessed, with injured athletes experiencing higher levels of symptoms for both depression and generalised anxiety disorder.

<sup>122</sup> NZ Rugby's education manager has said, "There is a perception that rugby players are tough and asking for help is a sign of weakness. Our campaign is explicitly about breaking that down. Asking for help is actually incredibly courageous and very tough."

<sup>123</sup> For example, NZ Rugby has the Headfirst programme, which sets out information on what to look for in terms of mental health and what to do about it: <https://www.headfirst.co.nz/mental-fitness>. The NRL has the State of Mind programme developed in partnership with Lifeline, Kids Helpline, headspace and The Black Dog Institute. The foreword states: "In Australia, 1-in-2 people are affected by mental illness. It's Australia's single biggest health issue and, as Australia's biggest sporting community, we can and should play a pivotal role in improving the outcomes for those affected." <http://www.nrlstateofmind.com.au/about-us/>

<sup>124</sup> Elite Athletes need to know the process is confidential. For example, the NRL's experience in the past has been that even the location of the wellbeing and education personnel's office can be a barrier to players seeking help: some do not want to be seen by the coach as seeking help for fear it may compromise their prospects of being selected.

<sup>125</sup> For example, Sir John Kirwan has been a pioneer in terms of mental health. HPSNZ is running a symposium on mental health in November 2018 in an attempt to draw greater attention to the importance of mental health.

<sup>126</sup> The importance of confidentiality was emphasised to me. A doctor's or physio's duty is to his or her patient. It is the Elite Athlete's decision as to whether or not that information is shared with others.

<sup>127</sup> Examples included public humiliation of athletes, favouritism, attempts to identify complainants and unduly restricting access to families during competition events.

<sup>128</sup> Standards of behaviour apply equally to all participants, including Elite Athletes, with the difference being the power and control able to be exercised by a coach, particularly in relation to selection either directly or indirectly. For example, one Elite Athlete told me about a selection decision which they believed was really unfair but a key concern in how they responded to the consequences of getting a black mark against your name if you challenge the selectors' decisions.

The relationship between Elite Athletes and their coaches is critical. For it to be optimised the coach has to know and understand the Elite Athlete. There needs to be mutual trust and respect. The experiences of the people I spoke to and the available research all point to the importance of the athlete-coach relationship being a caring, understanding one.<sup>129</sup> The days of an all-knowing coach dictating terms to an all-complying athlete should be well and truly over. Yet, I was told that if the coach is perceived to be producing results, then poor behaviour can be tolerated within the environment.

NSOs need to support their coaches and other team personnel and provide them with the training and education they need to understand and respond to issues relating to the welfare of their Elite Athletes.<sup>130</sup> The understanding, and the expectation, should be that the coach's and other team personnel's role goes beyond the technical and tactical to forming relationships and treating people in a respectful way that brings the best out of them. This is a core skill which NSOs need to foster and develop in their coaches and other team support personnel.<sup>131</sup>

The challenge is being able to perform under pressure at pinnacle events and that requires Elite Athletes to have the mental and physical skills, experience and edge they need to perform in those big moments. While every athlete is different and different sports have different levels of individual decision making required, that edge is less likely to be developed by an Elite Athlete simply doing what he or she is told.<sup>132</sup> Elite Athletes want to be in the position of owning their performance.

It is Elite Athletes who have to perform on the field, so it is Elite Athletes who need to be provided with the skills, experience and preparation they need not only to perform but to peak at the right times. Coaches, team management and High Performance Managers need to lead and make decisions, but the critical issue impacting on Elite Athlete rights and/or welfare is how they go about performing that role.

It is about striking the right balance in this regard: coaches and other personnel have to be able to do their job, which involves hard, honest conversations and making unpopular decisions. NSOs must be wary of creating environments where an athlete equates not being selected with having a legitimate grievance.

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<sup>129</sup> I was told that “if players are scared of making mistakes or being dropped, they will be worrying about themselves as individuals rather than focusing on what is best for the team. Connecting with players, showing you care, providing opportunities, showing faith, that is how to get the best out of people”.

<sup>130</sup> HPSNZ also has a responsibility in terms of its service providers embedded with an NSO.

<sup>131</sup> All athletes have different thresholds to more autocratic styles of coaching. Some react well to ‘old school hard ass coaching’ and have a low requirement for validation as to their competence; others do not. A coach has to cater for a wide range of people, and I was told that the best of them recognise when their athletes have a need they cannot cater for and either adapt their style or ensure there are people in the environment that can provide them with what they need to thrive.

<sup>132</sup> I was told about a competition where the coach threatened players with non-selection if they did not perform. The players tried too hard, played as individuals and performed poorly just prior to a pinnacle event. An alternative approach would have been to focus on building confidence, being positive, uniting the team and doing everything to be ready to nail the ‘big moments’ when they arrived.

Equally, coaches, team support and high performance personnel need to know and understand where the line is in terms of appropriate behaviours and be accountable if that line is crossed. Where the line is should be clearly spelled out in the relevant NSO's policies and there should be a clear expectation and process for holding anyone who crosses the line accountable for their behaviour.

### *Performance and Integrity*

A focus on the health of Elite Athletes is more than just ensuring that minimum safety standards are complied with. I was told that the physical and mental wellbeing of Elite Athletes are key to achieving performance: a Sporting Organisation will get the best performances out of athletes that are engaged, balanced and supported.<sup>133</sup> This accords with what I was told by the Elite Athletes I interviewed and with research on the importance of the coach-athlete relationship.<sup>134</sup>

While Sporting Organisations need to take care not to over rely on survey or self-reporting results,<sup>135</sup> the recent survey results of professional rugby players in New Zealand emphasise the importance of player engagement and wellbeing. In a survey jointly commissioned by NZ Rugby and the New Zealand Rugby Players' Association (NZRPA), a total of 484 professional players completed a 100-question survey by hand, including the All Blacks and Sevens national teams in 2017.<sup>136</sup>

Key results included that 99.4% of players believe rugby gives them the opportunity to develop as a person. Almost all players (98.1%) understand that there is an expectation, as a professional rugby player, to proactively engage in personal development. The survey found that 93% of players have a good sense of who they are or know what they want to achieve in their life beyond rugby. Mental health was rated the number one concern.

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<sup>133</sup> A 2008 study of Elite Athletes who medalled found that coaches fully satisfied their emotional needs by acting as friends, mentors and unwavering supporters – in addition to providing superb technical support. *“Each knows what to expect from the other (predictability); they understand how the other communicates, the environment they work best in and how to maximise their strengths in the context of their sport.”* High performing athletes who did not medal did not feel that way.

<sup>134</sup> For example, Dr Sophia Jowett in her article ‘At the heart of effective sport leadership lies the dyadic coach-athlete relationship’ states: *“Over the past 20 years our research has shown that a coach-athlete relationship characterised by high levels of closeness (e.g., trust, respect, appreciation, liking), commitment (e.g., intention to maintain a close bond to develop performance), and complementarity (e.g., interact in ways that are co-operative, collaborative, responsive, receptive, friendly as opposed to hostile) can positively affect athletes’ and coaches’ performance (e.g., motivation, competence) and wellbeing (e.g., vitality, satisfaction) as well as team dynamics (e.g., team cohesion, collective confidence)... Athletes are more engaging than ever before with their own development and thus distributed leadership, where power is shared and relationships are valued may be the most effective type of sport leadership in the 21st century.”*

<sup>135</sup> I was told that athletes do not necessarily provide full or honest feedback in surveys, particularly electronic surveys. Athletes fill out surveys after a campaign but do not see any changes so do not give much credence to the same survey the next time it comes around. Some do not trust that the feedback will be kept anonymous. I was told the best way to get feedback from athletes is in person when they understand why the feedback is being provided and what the outcomes will be.

<sup>136</sup> The survey explored attitudes and behaviours regarding: Alcohol, Mental Health & Wellbeing, Injury, Finance, Player Development, Illicit Drug Use, Contracts, Gambling, Medication/Supplements, and Player Interests.

There is also an overlap between healthy, supported athletes and integrity or other issues that affect the credibility, or the ‘inherent goodness’, of sport.<sup>137</sup> They include match fixing, anti-doping, supplement use, prescription medication, illicit drugs and on-field respect. These matters all come down to Elite Athletes being informed, knowing where to get advice when they need it and, ultimately, making good decisions.<sup>138</sup> Conversely, unsupported or vulnerable athletes present a risk to the integrity of that sport.

## **Diversity and Inclusion**

Diversity is the range of human differences, including but not limited to race, ethnicity, gender, gender identity, sexual orientation, age, religion, national origin, and political beliefs. Inclusion is about welcoming diversity. Inclusion for Elite Athletes is about the opportunity to participate on merit and free from discrimination.

Nearly all sports differentiate on the basis of gender.<sup>139</sup> There is a biological basis for doing so (in simple terms men are on average physically bigger, stronger and faster than women).<sup>140</sup> There is no justifiable basis for the under-representation of women in coaching, high performance and/or leadership roles in New Zealand.<sup>141</sup>

The under representation of women is particularly stark in elite coaching roles.<sup>142</sup> This is due to a range of factors including a subconscious bias that women are not ready to coach at the highest level, access to the largely male elite coaching networks and whether their sport takes women coaches as seriously as male coaches. I was also told that women in the past have just not aspired to these types of roles but that is changing. A number of initiatives are underway to address this under representation.<sup>143</sup>

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<sup>137</sup> A term used by one of the people I interviewed referring to sport’s inherently positive values and outcomes including participation, inspiration, team, respect, community.

<sup>138</sup> Sport NZ is considering, as part of its Sport Integrity review, valued based education for athletes to drive good decision making rather than simply telling them what they should and should not do.

<sup>139</sup> Equestrian, and mixed categories of sailing are notable exceptions.

<sup>140</sup> There is, for example, a 10% to 12% differential in terms of men’s and women’s respective world records in track and field events.

<sup>141</sup> Three women are currently NSO High Performance Managers from the 21 HPSNZ invested sports and five of the 12 NSO High Performance Athlete Development Leaders are women.

<sup>142</sup> Noeline Taurua and Haidee Tiffen are the only head female coaches in New Zealand’s leading team sports (netball, cricket, basketball, hockey, rugby and rugby league). Since 2010, 32 (20%) of the 157 carded coaches have been women, with 22 of these coming from netball. Of the 75 coaches who have been selected for the Coach Accelerator Programme, 15 (29%) are women. At the 2008 Olympics in Beijing, two (5%) of the 39 coaches were women, compared with 45.7% of the competing athletes. In London in 2012 two of the 59 coaches (3.8%) were women compared with 47.3% of the competing athletes. In Rio in 2016 two of the 62 coaches (3.2%) were women compared with 50.4% of the competing athletes.

<sup>143</sup> For example, 18 female Olympians graduated on 10 September 2018 from an NZOC led and managed 2 year Women’s Sport Leadership Academy programme.

The reality is that each gender has different needs and the high performance system needs to cater equally for the needs of men and women. This may require bespoke rules or processes.<sup>144</sup>

Sporting Organisations, particularly in some sports, lack diversity at the high performance and Elite Athlete levels.<sup>145</sup> This is an issue that Sporting Organisations are grappling with. The benefits of diversity are that it will lead to a diversity of experiences, ideas and decision making, which will in turn contribute to a genuinely inclusive culture.

NZ Cricket is an example of a sport acknowledging that its long-standing existing approach was failing, and it had to do something about it. NZ Cricket knew it needed to do something about the lack of opportunities for women in cricket and started by commissioning in 2016 a report which provided hard data (for example, 90.5% of cricket clubs do not provide female only teams and over half offer no cricket for women at all).

The report was overseen by a steering group led by one of NZ Cricket's three female Board members, Liz Dawson. The debate shifted away from being about what to do about women in cricket *"to the cost of not including female talent and input at all levels if the sport wants to remain competitive in a dynamic, fast-paced industry. It's not about how to help women fit into what is existing but how to change that environment"*. NZ Cricket has committed to implementing a plan to bring about the change required from the review.

The IOC is embracing gender equality. It is growing female participation at the Olympic Games to 50%.<sup>146</sup> It is also raising the profile of female sports; for example, on the final day of the 2018 Winter Games, equal numbers of women's and men's events took place, whereas both the 2010 Vancouver and 2014 Sochi Olympic Winter Games did not host any women's events on their final days of competition. Sport NZ has also developed a specific strategy for women and girls in sport.

New Zealand's population is becoming increasingly diverse. By 2038, 51% of New Zealanders will identify as Asian, Māori and/or Pasifika. Different sports have different cultural mixes; for example, elite badminton players in New Zealand are 98% Asian while the majority of Elite Athletes in HPSNZ targeted sports appear to be from Pākehā backgrounds.<sup>147</sup>

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<sup>144</sup> For example, in relation to concussion, the 4th International Conference on Concussion in Sport accepted that gender may be a risk factor for injury and/or influence injury severity. The science and research may therefore establish in time that female athletes who have suffered a concussion need to be managed or treated differently from men.

<sup>145</sup> This is not an issue restricted to New Zealand. For example, the UK Duty of Care report states, *"Lack of minorities, LGBT people, disabled people and women are underrepresented in most sports, particularly at coaching level."*

<sup>146</sup> In London in 2012 there was a 44% female participation rate and 45% in Rio in 2016. New Zealand achieved gender equity in 2016 with more than 50% of athletes representing New Zealand in the Olympic Games and Paralympic Games being female.

<sup>147</sup> This is certainly the perception of some of those I interviewed. NZOC does not have very reliable data on the cultural makeup of Games teams as many athletes did not answer this question in the survey.

Issues relating to the treatment and engagement of Elite Athletes will arise in high performance sporting environments and the people and culture of the environment will determine how they are dealt with. An inclusive and diverse environment will assist in that regard. For example, New Zealand has one team in the NRL, but many New Zealand eligible players play in the 16 team rugby league competition. Currently 46% of NRL full time professional athletes are from a Pacific Island background, yet less than 2% of coaching and administration staff are.<sup>148</sup>

Ultimately, greater diversity in leadership and coaching will, in my view, produce better and more balanced decision making. That, in turn, is likely to result in a greater focus on broader issues than simply medal success, including the needs and welfare of Elite Athletes.

### **Counselling/Support**

Elite Athletes often work under intense pressure in close relationships with coaches and support personnel. Issues will arise in these environments that require assistance to resolve. Sporting Organisations need to have preventative resources available and accessible to Elite Athletes and other participants (education and awareness) as well as support and assistance if an issue does arise.

The challenges Elite Athletes face are not unique but can be exacerbated when the athlete emerges from life in a training/competition bubble ill-equipped to deal with the realities of normal life. The consequences can be catastrophic for the individual concerned.<sup>149</sup>

Most team sports (and most commercial businesses) provide Employee Assistance Programmes (EAPs). These programmes provide anonymous support for employees who request it, whatever their position within the organisation (and usually for immediate family members as well). Confidentiality is critical to the success of EAP programmes: the employer is only provided with high level details (for example, the categories of help provided) or specific details if the employee consents to this information being shared.

Commercial environments (and some Sporting Organisations) also often have a separate whistle blowing hotline for employees who suspect wrong doing. The whistle blowing hotline is aimed at criminal conduct but can overlap with the EAP programme; for example, an allegation of bullying or inappropriate behaviour could be raised through either process. A call on the hotline will typically result in notification to a nominated senior manager either anonymously or named if the person provides consent to do so.

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<sup>148</sup> I was told that cultural issues have led to issues in the NRL; for example, I was told that Pacific Island funerals can go for 5 days, yet young NRL players do not feel able to raise their need to take this amount of time off with their club. While I was told of other examples of cultural issues or concerns arising in high performance environments and their impact on Elite Athletes in New Zealand, the cultural responsiveness of different sports' high performance environments is not covered by this review.

<sup>149</sup> Issues can include financial mismanagement, relationship breakups, behavioural issues, substance abuse, mental health issues and corruption.

A hotline is a tool that will be effective only if Elite Athletes use it.<sup>150</sup> I was told that whether it will be used will depend on whether the Elite Athlete is aware of it and, importantly, whether they believe what they say will be acted on. However, having a formal written whistle blowing policy still represents best practice and how whistle blowing hotlines for the reporting of serious issues in sport can be embedded across all sports is an issue that needs addressing.

A whistle blowing hotline is not a substitute for having a culture and environment where Elite Athletes can speak up or others will do so on their behalf. Some NSOs have processes in place for dealing with complaints, anonymous or otherwise, while others don't.<sup>151</sup>

HPSNZ targeted sports do not generally have access to EAP programmes but rely on issues being raised with or identified by key personnel in the environment, for example, the doctor, sports psychologist or Athlete Life Advisor.

Confidentiality is critical in these cases, except where the threat to an athlete's health is extreme. I was told of examples where this has been the case and the response of those involved has been to implement measures and make decisions solely on the basis of what is best for the athlete's wellbeing. The impact on the athlete concerned can be magnified if the issue attracts media attention. Whatever an athlete has done or not done, no human being should be put under a level of public scrutiny or pressure such that his or her life and health are at risk.

In terms of providing advice or a service to an Elite Athlete, I was told that it is about building a relationship with the Elite Athlete: if the athlete likes and gets on with the provider, he or she will be more likely to open up. Building a relationship of trust and confidence can take time.

In terms of whether the person is internal or external, on the one hand I was told that it can be very difficult for a totally external person to provide meaningful help to Elite Athletes as they do not understand the environment. On the other hand, I was also told that for some issues it was much better to have an external person.<sup>152</sup>

The optimum situation appears to be where service providers are sufficiently part of the environment to know and understand what an Elite Athlete is going through, while maintaining independence from the team management so that the athletes have confidence that the provider is acting in their best interests independently of team management.

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<sup>150</sup> Drug Free Sport New Zealand, for example, has closed down its anonymous whistle blowing hotline because it was not used. It is currently exploring alternative options.

<sup>151</sup> NZ Rugby, for example, has an independent online and telephone service where anyone can complain about inappropriate behaviour in rugby and an app aimed at staff, management and players providing information and a mechanism to express concerns relating to integrity or behavioural issues. The extent to which a sports wide reporting mechanism needs to be introduced is a matter that will be addressed as part of Sport NZ's Sport Integrity review.

<sup>152</sup> For example, an Elite Athlete recently referred in the media to a need to seek assistance from someone completely independent of the environment: *"I wanted absolute trust in who I was talking to and someone who was outside of the environment who would hear my voice."*

Finally, support for Elite Athletes should not be limited to when they are suffering from a health or other issue. It is important for sports to support their competitors and acknowledge the commitment they put in even if they do not achieve the desired results. Elite Athletes feel guilty when don't perform and may feel like they have let everyone down.<sup>153</sup> They are acutely aware of the acknowledgement and support they receive at a human level from administrators and others during these times. A failure to achieve a desired outcome or result is the time and opportunity to really demonstrate the regard in which the athlete is held as a person.

## Disputes

Selection disputes, anti-doping matters and other disputes that fall within their jurisdiction can be resolved by the Sports Tribunal.<sup>154</sup>

In relation to selection, while mistakes are still made, Sporting Organisations all understand the importance of having a selection policy and ensuring the process and criteria are adhered to.<sup>155</sup> Best practice is to have clear protocols around how selection decisions are communicated to individual athletes affected by these decisions.<sup>156</sup> Most Elite Athletes have a mechanism to raise an issue or dispute, usually an internal right of review or appeal followed by an ombudsman and/or the Sports Tribunal.<sup>157</sup>

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<sup>153</sup> One Elite Athlete told me he beat himself up when results did not go his way and he needed reminding that it was just a result not a reflection on him as a person.

<sup>154</sup> The Sports Tribunal's jurisdiction is established by the Sports Anti-Doping Act 2006. Essentially, the Sports Tribunal can hear and decide:

- cases involving anti-doping rule violation;
- appeals against decisions made by an NSO or NZOC, provided the rules of the NSO or NZOC specifically allow for an appeal to the Sports Tribunal in relation to that issue. Such appeals can include:
  - appeals against disciplinary decisions; and
  - appeals against non-selection for a New Zealand team or squad;
- other sports-related disputes that all of the parties to the dispute agree to refer to the Sports Tribunal and that the Sports Tribunal agrees to hear; and
- matters referred to the Sports Tribunal by Sport NZ.

<sup>155</sup> The Sports Tribunal heard and determined selection appeals under urgency in relation to Yachting NZ's selections for Rio 2016. Sir Bruce Robertson, sitting as the Tribunal, concluded: "*As troubled as I am by the lack of consultation, support, and communication with the athletes by YNZ, on the basis of the information presented to me, I am not satisfied that this inadequacy meets the high threshold to justify intervention and overturning the YNZ nomination decisions on either appeal.*" Earlier in his decision he emphasised the importance of communication: "*I have concerns about the inadequacy of communication by YNZ to both athletes. While the selection policy is drafted to provide huge discretion to YNZ, this does not obviate its obligations to abide by the rules of natural justice and to ensure basic fairness in its implementation. In particular, athletes in contention for nomination should be aware of what information they are being judged by and be given a reasonable opportunity to provide feedback on this. I am not sure the athletes were given this opportunity or that the individual circumstances of the athletes in question and how they would perform at the Rio Olympics venue were adequately assessed in arriving at their decisions.*"

<sup>156</sup> I heard examples where selected related issues or decisions were handled poorly in terms of Elite Athletes being told at inappropriate times or in inappropriate ways. I also heard examples of when it was done well including one case where a champion Elite Athlete was not selected, and believed he had grounds to challenge the decision but did not do so in part because of his trust in the people and belief that a fair process had been followed.

<sup>157</sup> Between 2003 and June 2017 there were 187 substantive decisions of the Sports Tribunal, of which 115 have been anti-doping cases. The remaining cases have been appeals against decisions of NSOs, and, on occasion, the NZOC, with only one published decision in a 'sports related' dispute referred by agreement.

Some of the internal mechanisms can be heavily in favour of what is most expedient for the Sporting Organisation.<sup>158</sup> Sporting Organisations' legal obligations may be set to change in this area.<sup>159</sup>

In relation to anti-doping matters, the Sports Tribunal resolves all cases for all Elite Athletes in New Zealand, with the exception of rugby.<sup>160</sup>

Sporting Organisations need to be able to make hard and, in some cases, unpopular decisions that impact on Elite Athletes' welfare. Equally, Elite Athletes who feel they have been unfairly treated need to have a forum to express their concerns and challenge the decision if they have valid grounds to do so. Sometimes the terms of the Athlete Agreement will make it hard for them to do this.<sup>161</sup>

It is in all parties' interests for grievances<sup>162</sup> to be resolved at an early stage. For example, an Elite Athlete might raise an issue with a CEO or a High Performance Manager at his or her NSO about a coach. If the NSO backs the coach, then the athlete may be left feeling marginalised or ignored. The Elite Athlete may then give up on his or her complaint and either accept the situation or move on.<sup>163</sup> In either case the sport is the poorer for it: either it has a disengaged or disillusioned Elite Athlete or the Elite Athlete exits the programme.

Elite Athletes need to be able to access an independent system which should focus on early resolution of issues where possible but have the ability to independently investigate and determine matters where it is not.<sup>164</sup>

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<sup>158</sup> For example, one Sporting Organisation's High Performance Athlete Agreement provided for any dispute between the athlete and coach and/or team members to be the subject of written notification, negotiation in good faith and then, if unresolved, determination by the High Performance Director (whose decision will be final and binding).

<sup>159</sup> Almost all Sporting Organisations are incorporated societies. The Law Commission has recommended that every incorporated society have rules in its constitution to provide procedures for the resolution of complaints concerning misconduct or discipline of members, and of grievances brought by members concerning their rights or interests as members. An exposure draft of a bill incorporating this requirement has been consulted on publicly with the intention that it will be put before Cabinet for a decision later in 2018 (<https://www.mbie.govt.nz/info-services/business/business-law/incorporated-societies>).

<sup>160</sup> This is an anomaly that needs to be addressed. While there are complications arising from the requirements of World Rugby's Regulations (which NZ Rugby is bound to follow), it makes no sense for rugby players to appear before a different tribunal from every athlete in New Zealand bound by the WADA code. The recent cases involving clenbuterol again demonstrate the value in having a single Tribunal with the expertise required to deal with a high volume of cases in a range of sports in a consistent manner.

<sup>161</sup> For example, an NSO athlete agreement that requires the athlete "to conduct yourself in a proper manner to the absolute satisfaction of the HP Director and the [NSO]". That is hardly an objective or defined standard but instead one wholly intended to provide the NSO with as much leeway as possible to decide what conduct is or is not 'proper'.

<sup>162</sup> A grievance in simple terms is where an Elite Athlete thinks they have been wronged unreasonably.

<sup>163</sup> Don Mackinnon's 2015 review of the Sports Tribunal found that "A large number of the cases that have come before the Tribunal (excluding anti-doping proceedings) appear to have arisen through poor communication and/or clashes of personality". He also found that "At present, these conflicts typically 'simmer away' within a sport often remaining unresolved and causing deep resentment".

<sup>164</sup> NZ Rugby's Respect and Responsibility Review lists the relevant factors a Sporting Organisation should consider when deciding whether to appoint an independent investigator. They include the nature of the allegations, the profile, role or seniority of the person complained of and/or the existence of close relationships within the Sporting Organisation which would make an internal investigation difficult to conduct or would call into question the credibility of any findings.

Elite Athletes who are employees can resolve disputes in mediation or, if necessary, they can be heard in the Employment Relations Authority or the Employment Court. For Elite Athletes who are not employees and for issues that do not relate to selection or anti-doping, there is a lack of a ready-made forum to resolve or facilitate disputes, which often relate to relationship or communication issues.

While ultimately these disputes may be able to be resolved by a court or the Sports Tribunal, costs and delay are but two key reasons why this rarely occurs.<sup>165</sup> There are multiple benefits arising from using mediation to try to resolve these types of dispute:

*“Mediation gives the parties the opportunity to genuinely communicate and listen to each other’s perspectives; to look at solutions beyond ‘win or lose’; to reach outcomes that can be kept private and out of the public arena; and crucially the chances of the parties leaving a mediation with the relationship repaired are significantly higher in mediation than at the end of a defended hearing.”*

Don Mackinnon recommended the creation of a Sports Mediation Service, which if properly constituted, resourced and promoted could, in his view, provide an outstanding resource for the New Zealand sporting community.<sup>166</sup> I agree.

Additional options would include broadening the jurisdiction of the Sports Tribunal to give Elite Athletes a broader right to have unresolved disputes determined by the Sports Tribunal (if mediation was not successful), the development of a customised online dispute resolution system and/or appointing a person or body with the capability or resources to act as a clearing house for a range of sporting integrity issues or disputes (which could extend to Elite Athlete disputes within their NSO). All these options require weighing up the benefits of providing further external forums and mechanisms for facilitating and resolving disputes with the costs and delay involved. These are matters which should be further considered as part of the Sport Integrity review.

## **Education**

Education is important and necessary to equip Elite Athletes to perform their role. Sporting Organisations cannot fairly hold Elite Athletes to account for their decision making and behaviour if they have not provided them with the required skills and information. NSOs are primarily responsible for the education of Elite Athletes within their environments but in some team sports this responsibility is shared with Players Associations, who take on many of these responsibilities.<sup>167</sup>

Drug Free Sport New Zealand also plays a key role in providing anti-doping education and resources.

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<sup>165</sup> Don Mackinnon’s review found that “parties to hearings before the Tribunal are typically incurring legal costs for a one-day hearing of anything between \$10,000 to \$30,000 (and far more for protracted cases)”. Canoe Racing New Zealand ended up having three selection appeals heard by the Sports Tribunal and judicial review proceedings in the High Court.

<sup>166</sup> While the Sports Tribunal can and does offer mediation, it is a specialist skill which may be best provided on an independent stand-alone basis to try to resolve the dispute at an early stage.

<sup>167</sup> For example, in cricket and football it is the Players Association that delivers match fixing and other education sessions with professional players.

Education is critical not only for matters that directly affect Elite Athletes' participation in sport (for example, health and safety, rules of sport, acceptable standards of behaviour) but also for wider integrity matters (for example, anti-doping, match fixing, supplement use) and the importance of inclusiveness and diversity.

Education is particularly important when athletes come into the elite sporting environment to ensure they are informed of and understand what is required of them. All Sporting Organisations should have a formal induction process for new Elite Athletes, but it is also an important ongoing requirement for Sporting Organisations to address.<sup>168</sup>

## Interests Outside Sport

Working hard at sport and a focus away from sport are not incompatible or mutually exclusive. On the contrary, many of the best Elite Athletes have developed outlets outside sport and the importance of doing so was reinforced by many of the people I interviewed.<sup>169</sup>

If it is accepted as important for Elite Athletes to have an interest outside of sport, whatever that might be,<sup>170</sup> then time needs to be available for these athletes to grow and develop in these other areas. I was told of examples of Elite Athletes who would not have had the lengthy career they did without a release or the opportunity to pursue other interests. I was also told of examples of Elite Athletes who were happy to commit to their sport on a full time basis.<sup>171</sup>

Some NSOs have accepted the need to encourage their athletes to have a balanced life outside their sporting environment. For example, rugby and cricket have agreed to restrictions that limit access to players playing in their domestic competitions from 8.30am to 5pm during the week during the season. For netball the restrictions extend to during the week during the season apart from two 4 hour blocks between 9am and 5pm. The reason is to mandate, or at least provide, the opportunity to work or study.

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<sup>168</sup> For example, the NRL works with experts to roll out programmes to players across all elite pathways (14 years and up) addressing issues including mental health, career transition, gambling, alcohol, social media, cyber safety, finance and money management, cultural awareness and resilience.

<sup>169</sup> For example, one interviewee said: *"It is important to look to understand the athlete and their personality. What's important to him or her – for example, family, relationships, interests? It's about not investing your whole self in one outcome: 'Olympic medallist' does not define you. A self-worth based solely on achievement or outcome is not healthy."*

<sup>170</sup> For example, study, work, music and/or gliding.

<sup>171</sup> One former Elite Athlete told me that he put the real world on hold to pursue his sport but does not accept that it was a sacrifice to do so. He had fun and amazing experiences in that time as well as other benefits (for example, he speaks three languages). It was what he chose to do: *"If you don't like it don't do it"*. It was hard work, *"but so is working in a law office 70 hours a week"*. For that athlete, *"if you are hedging bets by planning for life after sport then you're less likely to be as good at what you do as if you commit 100% to your goal"*. Another interviewee stated, *"If you climb Everest knowing the risk of frostbite then don't complain if you get frostbite."*

This approach is not limited to New Zealand.<sup>172</sup> Research is being conducted into the relationship between careers off the field and performance on the field.<sup>173</sup>

It is worth noting that these restrictions on access to players have not been readily accepted by everyone within the rugby, cricket and netball communities. I was told that there was a strong view held by some people within the sports that these restrictions were Player Association initiatives that limited high performance effectiveness.

I understand the frustrations of those administrators and team personnel who directly equate a failure to achieve a performance outcome with a lack of access to athletes, particularly in circumstances where their international competitors are fully professional and can access their athletes on a full time basis.

The solution is not, in my view, to require amateur or part time athletes to train and compete full time without providing the means to do so. Such a response demonstrates a lack of understanding of the importance of athlete welfare and of creating a holistic approach to performance success.

All Elite Athletes have family, friends and support networks. Those relationships and networks need to be considered and provided for consistent with the demands of their sport. Participants in high performance sport need to fully commit to their endeavour but equally all Elite Athletes should be provided with scheduled breaks during the year that do not change. NSOs need to agree the timing and duration of these breaks for their Elite Athletes within their sport and adhere to them even if a coach or other leader subsequently decides they want or need extra time with their Elite Athletes.

Sports with a limited pool of Elite Athletes are incentivised to look after the whole person needs of their athletes to keep them engaged and prolong their careers in that sport. From a performance perspective, sports with a high volume of talent can survive with a higher turnover. If a sport has an equally talented athlete who does not require off-field support, then the 'low maintenance' athlete is an easier option for the sport to pick. There is a risk that the sport will churn through its Elite Athletes on the constant look out for the next 'one of a generation' athlete who will bring success, glory and increased or continued funding to that sport.

At a certain point, disillusioned athletes are likely to quit their sport and walk away if they do not perceive they have a future at an elite level. I was told of cases where this outcome was avoidable if the NSO had addressed their issues or concerns. In some instances the NSO did not know, or take steps to find out, what these concerns were and the athlete, wanting to leave on good terms, did not take it further. That is not good enough in my view.

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<sup>172</sup> The expectation on young league players is that they will work or study, and a full day a week is set aside for personal development. I was told that this expectation and philosophy has changed the mentality around elite players coming into the NRL by normalising athletes doing something away from rugby league for personal development.

<sup>173</sup> For example, the NRL in 2017 commissioned an independent study which showed that helping NRL players to plan for life after sport has a positive impact on their performance in terms of being selected for the team when available (that is, not injured or rested) and overall years playing in the NRL.

Every Elite Athlete should be encouraged and provided with opportunities to develop their relationships and life outside their sport. Each athlete is different, so their needs need to be catered for individually, consistent with the overall needs and requirements of the team or crew they belong to. Life outside sport needs to be part of the performance conversation. What was traditionally viewed as a distraction may actually be a performance enabler.<sup>174</sup>

## Life Outside and After Sport

Athlete Life Advisors, Personal Development Managers (PDMs) and other providers all work with Elite Athletes in relation to their life outside sport. In addition, almost every New Zealand Elite Athlete will need to work after they retire from sport.<sup>175</sup>

There is clear evidence of the need for Elite Athletes to prepare for when they retire.<sup>176</sup> I heard many examples of Elite Athletes struggling with the transition into life after their sport. They know it is coming, and they have thought about it, yet it is still a shock when it occurs.<sup>177</sup> I was told that, for some, this means they stay in their sport too long partly because they do not have an alternative or know what else to do. Elite Athletes need to be planning for their life after their sport in terms of education, career and/or other skills.

Some Elite Athletes have work, study or other activities and interests which complement their sport. An issue arises, however, if the right thing to do by the person is not, or is perceived not to be, the best thing to achieve on-field performance. How do we balance athlete welfare and winning?

Some athletes may make conscious decisions to put all their efforts into their sport for a period of time. Others may be forced to pursue alternative careers or education because of injury or non-selection.<sup>178</sup>

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<sup>174</sup> For example, the All Blacks used to keep family away from the team hotel, particularly on game day, because it was viewed as a distraction. Now players' wives and families are welcomed into the team hotel and environment, including on match day, in recognition of the important role and impact they have on a player's wellbeing and performance.

<sup>175</sup> Exceptions may include equestrian riders and the odd professional basketball player, footballer and/or golfer.

<sup>176</sup> "The elite performer is often blind to the fact that their career can be brief, curtailed, or even unexpectedly terminated due to a wide variety of circumstances. It is therefore important that an early intervention plan is established. The implementation of such a plan may result in a less stressful time both emotionally, psychologically, and financially, both during and after their involvement in elite performance" (Deidre Anderson, 'A Balanced Approach to Excellence: Life-skill intervention and elite performance').

<sup>177</sup> In the NRL, for example, the three areas players find the most challenging in transition are financial changes, health (physical effects on the body after years of collisions) and missing the camaraderie. The NRL's focus is on assisting players with their identity outside of being a rugby league player and ensuring there are other networks that they are connected to given the many benefits to the player and those around them when the player's sole focus isn't just playing the game.

<sup>178</sup> One Elite Athlete I spoke to referred to her "4 years in the wilderness" when she was not selected, which "sucked at the time" but in hindsight allowed her to get a degree, get a good job and become a better, well-rounded person. That athlete is 40 caps behind her peers but has a business degree (and subsequently has obtained a masters degree) as well as work and life experience.

Ultimately that decision is for each Elite Athlete to make, provided the sport is ensuring that the athlete has the opportunity to further their education, career and/or personal development consistent with the demands of their sport.<sup>179</sup>

NSOs need to take a broader and longer term view of what is best for their sport, rather than short term performance objectives. A good example is the opportunity for Elite Athletes to study at overseas universities.<sup>180</sup> These overseas educational experiences can be, and are being, promoted to younger athletes and their families as one of the benefits of playing that sport.<sup>181</sup> The question for the NSO is then how Elite Athletes who want to take up these opportunities are treated prior to their departure, while they are away and on their return.<sup>182</sup>

Some interviewees were of the view that Elite Athletes need to fully commit to what they are doing to achieve their goal and external distractions will detrimentally affect their training, preparation and/or focus.<sup>183</sup> Others believe a sport will probably drive people away from being involved if the message is that Elite Athletes should only concentrate on their sport.<sup>184</sup>

While each Elite Athlete is different, having an interest or preparing for life outside of sport may be a benefit in terms of easing performance concerns or providing external stimulus.<sup>185</sup>

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<sup>179</sup> In some sports it is clearly harder than in others at the elite level to achieve this balance, for example, snow sports and yachting where competitors have to spend large parts of the year overseas to get meaningful competition.

<sup>180</sup> Elite Athletes from football, rowing, athletics and other sports have scholarships and other opportunities to study and compete in US and other overseas universities.

<sup>181</sup> I was told that scholarships to US universities can be worth up to \$100,000 per year, so this presents an opportunity to have a unique life experience and obtain an otherwise unaffordable university degree from a quality overseas university while still being able to train and compete at a high level.

<sup>182</sup> I was told about, and Elite Athletes have gone public with, examples of instances where Elite Athletes were actively discouraged from taking up these opportunities and/or their selection or treatment within a national team was affected as a result. For example, one Elite Athlete spoke of their desire to do a masters degree because of a need to refresh mentally, a desire to broaden their horizons and a need to have a plan B. That athlete did not feel supported by their NSO at all despite the benefits for them as a person and, long term, as an athlete from having a break after years of competing at the highest level. For their part, NSOs would prefer their best athletes stayed in New Zealand but do not believe they discriminate against these athletes. Rowing NZ, for example, informed me that it does not have a policy excluding US scholarship recipients, USA based rowers are not selected because they cannot trial because US exams are at the same time as New Zealand selection trials, and Rowing NZ has selected rowers in age grade national teams in the knowledge that they will go to university in the US.

<sup>183</sup> One former Elite Athlete told me, *“I tried studying postgrad but it was too hard with all the travelling and training. It was meaningless study, for the sake of it. I needed an outlet from my sport but it had to complement my sport.”*

<sup>184</sup> For example, I was told that *“talented people can deal with and manage multiple things at the same time”*.

<sup>185</sup> By way of example only, one interviewee spoke of realising her dream to compete as a full time professional only to *“never play worse in her life”*. After her first year as a full time professional she learned she needed stimulus outside playing and training. She achieved this by teaching English, learning a language and doing postgraduate study.

In addition, rugby's experience has been that making education, skills and/or a career a priority will soon see it normalised into the players' calendar.<sup>186</sup> There was universal support from those I interviewed for Prime Minister's Scholarships, which provide a flexible and meaningful resource for Elite Athletes to gain qualifications during and after their careers.

The issue with Elite Athletes who have dedicated their whole life to their sport without distractions is that those athletes think they will be fine later in life, but many are not. I was told of many examples of athletes who exit their high performance environments without the skills they need.<sup>187</sup> Sport Australia put it this way:

*"Due to an ever increasing focus and attention on the individual's status as an athlete during their formative teenage years, it is very common for aspiring sportsmen and women to close themselves off from developing competencies and interests in other areas. They are drawn into the inclination that a career in sport is their defining ambition in life. This in turn creates a self-fulfilling prophecy, whereby high achieving athletes have low expectations placed on them from school onwards with relation to human capital development. Highly controlled professional sporting environments rob athletes of the opportunity to develop decision making and problem solving abilities, to think creatively and critically and to develop high levels of self awareness outside of sport itself."*

Sporting Organisations have a duty to ensure Elite Athletes are working to achieve balance to their lives and planning their transition from, and life after, sport. That duty is not satisfied if an athlete waits until the end of his or her career in the hope or expectation that 'something will come along'. Sporting Organisations should focus on Elite Athletes making decisions on an informed basis having genuinely been provided with the opportunity and means to develop outside their sport rather than being allowed, or encouraged, to blindly pursue an elusive and all-consuming goal.

How should HPSNZ targeted sports respond to Elite Athletes who want to dedicate their whole life right now to their sport without distractions?

In some sports, for an Elite Athlete driven to be best in the world it is very hard to have a life outside of the pool, boat or track given the volume of training they have to do.<sup>188</sup> It is a matter of eat, sleep, train and then make the best use of the remaining time available – read, study or whatever works for that athlete.

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<sup>186</sup> For example, rugby initially had resistance to Super Rugby players being given the same day off a week with coaches wanting to retain the right to change their coaching schedule for a week on a last minute whim if they thought it in the best interests of the team to do so. The requirement to have one day off a week is now written into the Collective Agreement and normalised such that a new generation of coaches do not even think to question the merits of doing anything different.

<sup>187</sup> As one interviewee put it, "for some athletes everything is done for them and when they do not perform and are cut then they have no idea how to do things for themselves. The system adopts athletes young and can breed the 'incapable athlete' – in the old days athletes had to work, be independent, plan and sustain themselves. These life skills and independence are missing in some athletes today". Some of these skills can be as simple as effective time management, given athletes' time in a centralised programme or a team environment can be managed and structured for them.

<sup>188</sup> Elite Athletes told me in various ways of the demands of competing in their sport at the highest level, that high performance is not '9 to 5' and athletes know what they are signing up for.

Ultimately every Elite Athlete has the right not to take up or postpone the opportunities to develop their education, skills or career. The key is that they are making informed decisions, having been provided with the opportunity to prepare for life after sport. It is also important that NSOs recognise the difficulties that Elite Athletes face in adjusting to life after their sport and support them in that transition. That is not universally the case currently.<sup>189</sup>

## Voice

Elite Athletes need to have a voice and to be part of the decisions within their environment and sport that affect them. That does not equate to having the final say. There are different ways in which athletes can be part of decision making:

- be provided with information;
- be consulted on a proposal;
- participate in forming a decision or dialogue; and/or
- be a decision maker.

Sports should adopt different mechanisms for engaging with their Elite Athletes at different points – no one size fits all – but rather the approach will depend on the particular issue and the appropriate level of decision making. Sometimes it will be sufficient and appropriate to provide information; other times the athletes should be the decision maker.

NSOs should not be afraid of starting by consulting and sharing information with the athlete. For example, Elite Athletes should be engaged for their views on selection criteria or an athlete agreement at the start of the process not once the selection policy or agreement has already been drafted and decided.<sup>190</sup>

The key question for each sporting environment is how their Elite Athletes participate in decision making. Is one on one communication and consultation through leadership groups or other forums sufficient or is there a need for separate and independent representation?

Elite Athletes have a right to organise themselves and have a collective voice. Professional athletes worldwide are exercising this right by forming their own associations<sup>191</sup> on a national and international basis.<sup>192</sup>

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<sup>189</sup> I heard examples of Elite Athletes feeling discarded by their sport once they had retired. One Elite Athlete spoke of “no avenue for advice, no support whatsoever post retirement, no communication even, apart from one generic email. I could not even use the gym. We don’t need our hands held but need to see a way forward with contacts, opportunities and support. Instead you feel isolated and alone, doors are shut: you are no longer part of programme, no longer of value. Simple things would give confidence and make a difference, for example, how to complete a CV, basic Word and Excel skills, intern opportunities or some other pathway”.

<sup>190</sup> I was told that some NSOs still operate this way.

<sup>191</sup> “... in 1973 there were eleven sports which had formed player bodies, spread across 25 nations with the majority of both concentrated in Europe and North America. Since then, there has been a dramatic increase in player associations in numerous sports. As of November 2016, there are ... 226 player organisations (174 player associations and 52 independent contractors) operating in 35 sports and 86 countries/national groupings. Five associations emerged in 2016 alone...” (Braham Dabscheck, ‘Forming Teams of their Own: The dramatic emergence of player associations across the globe’, LawInSport, 26 January 2017).

<sup>192</sup> For example, FIFPro, the International Rugby Players’ Association and the Federation of International Cricketers’ Associations respectively represent the vast majority of the world’s professional footballers, rugby players and cricketers.

## *United Kingdom*

UK Sport is looking at ways to enhance their athletes' voice in response to a series of high profile incidents involving athletes. The Culture Health Check report was released in May 2018 by UK Sport following consultation and a survey with athletes, staff and stakeholders in the high performance system.<sup>193</sup>

Team sports in the United Kingdom have Players Associations run along the same lines as their counterparts in New Zealand. Some sports have Athletes' Commissions.<sup>194</sup> In addition, the British Athletes Commission (BAC) was set up in 2004 as an independent membership association to represent predominantly, but not exclusively, Elite Athletes from Olympic and Paralympic sports.<sup>195</sup>

The BAC offers its members impartial and confidential advice, support and guidance. The BAC will help to try to resolve any dispute either directly with the governing body concerned or through the United Kingdom's sport arbitration service.

Further to a recommendation by Baroness Grey-Thompson, UK Sport in August 2018 announced new funding and capability for the BAC in an effort to improve athlete welfare. The aim is for the BAC to be able to provide better levels of engagement with its members rather than just responding to incidents and issues when they occur.

Baroness Grey-Thompson's report also recommended that:

- 1) sport's national governing bodies should have a nominated guardian responsible for issues relating to duty of care;
- 2) the government should measure duty of care via an independent survey to determine whether policies are working and inform future policies and investment decisions;
- 3) induction processes and exit surveys should be in place for all Elite Athletes; and
- 4) an independent role of Sports Ombudsman should be created with the power to hold national governing bodies to account in terms of the duty of care provided to all participants and to maintain public confidence that sport is conducted ethically.

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<sup>193</sup> All sports were invited to take part in the review, with 682 out of 895 athletes responding. Findings included:

- 1) 31% of athletes disagreed that they had opportunities to give feedback without fear of negative consequences in their programme; and
- 2) 30% of athletes stated they had witnessed unacceptable behaviour in their programme, while 24% who had experienced or witnessed the behaviour reported it.

<sup>194</sup> For example, on 23 June 2017 UK Athletics announced a newly formed UKA Athletes' Commission consisting of 12 elected or appointed current or former athletes. It is not intended to be a complaints box but rather an effective channel between the athletes and the Board. Its aim is to create a system for gaining athlete feedback on all key decisions affecting the sport on the basis that a Board containing former athlete representatives has not always effectively represented the interests and viewpoints of the athlete.

<sup>195</sup> Membership is free for athletes performing at the highest level; others pay a modest annual fee.

## *Australia*

Team sports in Australia also have Players Associations operating in the same way as those in New Zealand. Their involvement is long standing<sup>196</sup> and, while there have been acrimonious disputes,<sup>197</sup> the Players Associations play an integral part in Australian team sport on behalf of the players they represent. Their focus is the development and welfare of their Elite Athletes.<sup>198</sup> An Australian Athletes' Alliance has been set up to represent their collective interests in the same way that the New Zealand Athletes Federation has been set up to do.

A number of sports have Athletes' Commissions. There is, however, currently no independent body representing athletes from Olympic sports in the same way, for example, as the BAC has been set up in the United Kingdom to do.

## *New Zealand*

The need or benefit for Elite Athletes to have a collective voice through a Players Association, a collective bargaining agreement or any other external body or process is not generally accepted by HPSNZ targeted sports who are not team sports.<sup>199</sup> Furthermore, there is a fear amongst some of the sports I spoke with that Players Association involvement will make matters worse for sport not better.<sup>200</sup>

At the heart of the concern, I believe, is the realisation that Players Association involvement will result in a loss of some of the power and control Sporting Organisations currently have over their sport. In short, Players Association involvement will lead to a change in terms of how the sport is run and its resources allocated.

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<sup>196</sup> The Rugby League Players Association, for example, will celebrate its 40th anniversary this year.

<sup>197</sup> Cricket Australia's protracted collective bargaining dispute in 2017 was seen by the Cricket Players Association as an attempt to undermine the position of players as genuine partnerships to the game of cricket. The players demanded an increased share of rising revenue streams, while Cricket Australia sought to depart from the long-standing gross revenue share model for the longer term good of the game. Both parties tried to garner public support and used the media to try to influence the outcome of the negotiation.

<sup>198</sup> For example, the NRL has over 70 full time personnel working in player wellbeing and education.

<sup>199</sup> Concerns expressed to me include:

- The Players Association will drive a wedge between the sporting organisation and its players;
- There is no one best way to engage Elite Athletes, which is specific to each sport;
- It is about putting the rights of athletes first but how each sport does that may be very different;
- Any engagement should be kept as simple as possible and NSOs should not make an industry out of it; and
- Players Associations are not about what is best for the athletes but what is best for the people running the association.

<sup>200</sup> One former Elite Athlete and current administrator described it in these terms: *"Everything is difficult with Players Association involvement. It is not the Kiwi way to be self-entitled. It is about fronting up, working your ass off and doing the job that needs doing. We need to find a way. We need key decision makers who understand the sport."*

The concerns are only warranted to the extent that Sporting Organisations will not be able to continue to run their sport in the manner they traditionally have if they have to negotiate and/or seek the agreement of an independent athlete representative body on matters that affect their Elite Athletes.

The key question, however, is whether an independent athlete representative body will benefit the sport as a whole and athletes in particular. If so, how would any such arrangement work in the context of the environments individual HPSNZ targeted sports operate in? This is discussed in further detail in Appendix 4 below.

### **Community Connection**

All parties will benefit from Elite Athletes having a greater community connection. Elite Athletes are key ambassadors for their sports, who should be connected to their sporting community and also the wider community as a whole.<sup>201</sup> This is currently being done on an ad hoc basis from sport to sport.<sup>202</sup> Some NSOs have a contractual commitment to a certain number of promotional hours; others rely on relationships and the goodwill of the athletes concerned. HPSNZ is entitled to use carded athletes 4 hours a year but currently there is no strategy or system in place to use, or track the use of, those hours.

### **Commercial Opportunities**

Athletes own the right to their personal property (that is, their name, image, likeness and other attributes). Sporting Organisations own the right to their own names, logos, uniforms and other intellectual property.

Sporting Organisations typically obtain, via contract, the right to use, and sub-license the use of, athletes' personal property. This right is usually a limited right to use that personal property for commercial, promotional and development purposes in their capacity as an athlete as opposed to in their personal capacity. There may be restrictions to ensure that is the case; for example, athletes may need to appear in a commercial promotion in their uniforms with two or more other members of the same team.<sup>203</sup>

Elite Athletes are usually able to take advantage of commercial opportunities to exploit their own name or image provided they do not use the property of, or create an unauthorised association with, a Sporting Organisation. There may be rules or approvals in place to provide appropriate safeguards to ensure this does not happen.

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<sup>201</sup> As one NSO CEO told me, there is no real or lasting benefit in 'buying a win' unless that achievement is connecting back to the community in terms of kids participating in sport.

<sup>202</sup> One Elite Athlete told me that in 10 years she had only ever been asked to attend one community event. She was provided with less than 48 hours' notice and had to decline as it conflicted with her scheduled work commitments.

<sup>203</sup> Such restrictions are commonplace in sports that have a collective bargaining agreement but less so in sports that do not. For example, some NSOs' Elite Athlete agreements simply provide the NSO with the right to use their athletes' imagery "at any time, place, and in any manner whatsoever in order to promote the [NSO], any [NSO] teams, or the sport". The same freedom does not apply to the athlete's right to use the NSO's intellectual property: "You may not, in any way whatsoever, use or assign the right to use, or reproduce in any manner, any [NSO] Intellectual Property without the consent of [NSO]."

In practice, some Sporting Organisations try to restrict the rights of Elite Athletes to enter into personal sponsorships or endorsements if these have the potential to negatively impact on the Sporting Organisation's own sponsorship or other commercial arrangements. Other Sporting Organisations place minimal restrictions on their Elite Athletes, recognising the importance of personal arrangements to the ability for those athletes to train and compete on a full time basis.<sup>204</sup>

What an individual athlete can and can't do by way of a personal promotion is highly regulated for pinnacle events like the Olympics and for team sports where a Players Association is involved in negotiating the terms and conditions applicable to that environment. For Elite Athletes who do not have a manager,<sup>205</sup> agent or access to a Players Association, there is a void in terms of access to advice or support in relation to commercial issues or opportunities.<sup>206</sup>

While having a void may be perceived by some Sporting Organisations to be in their short term interests,<sup>207</sup> it does not equip athletes to make the most of their profile or provide them with the funding, skills and experiences that come with maximising their commercial opportunities.<sup>208</sup> This was a gap that was commented on by a number of the Elite Athletes I spoke to.

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<sup>204</sup> Athletics NZ is an example of an NSO that takes this approach.

<sup>205</sup> I was told that having a manager or agent is not commercially viable for most Elite Athletes in HPSNZ targeted sports because there are simply not the commercial opportunities available to make that role affordable for the majority of these athletes. Some of the Elite Athletes who do have a manager or agent benefited from the opportunities the manager or agent can create and the ability to ensure that those commercial interests become integrated into the performance conversation.

<sup>206</sup> This is not a service that is provided by HPSNZ or any other body in New Zealand currently other than the Athletes Federation on an ad hoc basis.

<sup>207</sup> For example, many Elite Athletes do not currently seek to question or negotiate the terms of their funding or other agreements.

<sup>208</sup> Online media and digital channels create opportunities for all Elite Athletes including potential commercial opportunities. One Elite Athlete told me that his personal sponsors rank the content he produces as importantly as they do his on-field results. Elite Athletes' data (for example, anaerobic output, vital signs) and image rights have the potential to be increasingly valuable, particularly given the enhanced and immersive experiences that virtual reality and other technologies can offer fans.

## 9. BEST PRACTICE HIGH PERFORMANCE ENVIRONMENT

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My view is that the characteristics of a best practice high performance environment in terms of Elite Athletes' rights and welfare would include:

1. **Clear vision and purpose.** The vision should be one that will inspire and guide its key participants and stakeholders. What success looks like for each sport should include the desired impact on stakeholders and the way success is to be achieved. The purpose would identify the core reason for being, which would not just equate to a performance goal (for example, to win medals).
2. **Culture.** Each Sporting Organisation should have a clear sense of identity<sup>209</sup> and the values, behaviours and expectations of the environment would be clearly communicated and understood. Within those parameters, individuals can express themselves and be unique, but everyone, including coaches, must buy into the culture if they want to be part of that environment.
3. **Strategy and policies.** The environment will have a clear strategy, fit for purpose policies<sup>210</sup> and people with the skills in place to implement those policies. They apply to everyone, with consequences for breach.
4. **Financial support.** Sporting Organisations need to acknowledge that financial pressures cause anxiety and distraction for most people and Elite Athletes are no exception. The expectations of Sporting Organisations need to reflect the reality of Elite Athletes' lives (which in some cases will include the need for part time work). In short, Sporting Organisations need to provide Elite Athletes with the financial support they need to meet the training and performance demands being placed on them.
5. **Focus on the person.** Sporting Organisations should take a holistic view of the Elite Athlete experience: it is about the person who comes into the elite environment, trains and competes in that environment and then transitions into the rest of their lives. Such an approach places greater focus on welfare and personal development in the Elite Athlete experience. Many coaches and other team support personnel believe that a developmental focus on the person can and will lead to improved performance.

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<sup>209</sup> For example, this is our whakapapa, this is who we are, this is what we believe in, this is what makes us different, this is what makes us special.

<sup>210</sup> A policy puts in writing the rules, expectations and planned actions to prevent or reduce the impact of certain behaviours. A review of individual policies will necessarily require a more detailed review and analysis into how the particular sport operates its high performance environment than I have conducted as part of this review.

6. **Life outside and after sport.** Inherent in a holistic approach is the belief that an NSO should not permit, require or allow Elite Athletes to live in a bubble such that they do not have the skills to survive when their time in the bubble comes to an end. Elite Athletes have an obligation to help themselves and take advantage of the opportunities they are provided in this regard, but it is not acceptable for an NSO to solely focus on on-field performance.<sup>211</sup>
  
7. **Empowerment of the athlete.** Elite Athletes are people and people become more engaged when they believe they have a level of control over their circumstances and environment.<sup>212</sup> The best sporting environments drive high levels of autonomy within their people. Sporting environments need to generate a sense of working together to achieve a common goal. Elite Athletes want to have a connection, pride and camaraderie. While team support personnel can direct, guide and support their Elite Athletes, they cannot do it for them. Elite Athletes are the people that have to perform under pressure in peak moments, and they need to be equipped to do so.
  
8. **Development of leaders.** Leaders are key to high performance environments. They build trust amongst the athlete group by how they behave and, in particular, how they treat people. A key attribute of leadership is treating people with respect.<sup>213</sup> Strong leadership mitigates the risk of a campaign going off track or an environment turning toxic. Strong leadership within the team or athlete group is also critical to driving the culture within the team. I heard many examples of the difference strong, empowered leaders can make to an environment, to a team and to performance.
  
9. **Education.** There is a range of matters on which Elite Athletes require ongoing education and awareness.<sup>214</sup> Sporting Organisations need to give all their participants the awareness and tools they need to comply with the standards and the obligations they expect. A critical juncture is their entry to elite sport. Education will improve good decision making and good decision making is key to preserving the integrity of sport.

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<sup>211</sup> In my view, the system is failing if it results in Elite Athletes leaving their sport without any education, experience, life skills or career options.

<sup>212</sup> One example was from a team environment where the Elite Athletes wanted to do their own recovery sessions rather than a team pool recovery the day after a game. A meeting with the leaders was held and all agreed pool recovery was best practice and needed to happen. The leading players then asked if they could run the session and they were given that responsibility. There has not been a complaint about recovery sessions since. Players have music playing and a range of activities from taking a Zumba session to playing ball.

<sup>213</sup> This came through clearly in my interviews with Elite Athletes: some did not feel known, listened to or respected by leaders in Sporting Organisations.

<sup>214</sup> For example, mental health training, social media, alcohol, women, drugs, corruption.

10. **Importance of the coach.** The coach-athlete relationship is critical to performance. It also is critical to athlete welfare. Coaches must be supported and provided with the tools they need to achieve the goals set for them. Those goals should be about the development of their athletes rather than just achieving a defined performance outcome. Sometimes it will not be about what the athlete needs but who can deliver it in a way that will resonate with that person.<sup>215</sup>
11. **Counselling and support.** All Elite Athletes should be able to access medical advice and other support if they need it. That should extend to confidential counselling and access to other specialist advice and support if required.
12. **Diversity and inclusion.** High performance sport cannot be ‘an old boys’ club’. The lack of cultural and gender diversity in high performance sport can directly impact on the welfare of Elite Athletes.
13. **Opportunities to be heard.** All Sporting Organisations need a range of forums and mechanisms for their Elite Athletes to be listened to and a culture which enables open and honest conversations to take place without fear of recrimination.
14. **Checks and balances.** It is not healthy or best practice for a performance environment to have unchecked power in a head coach or any one other person. Problems can be avoided if issues are addressed at an early stage. The High Performance Manager (or equivalent) should be monitoring, questioning and evaluating the high performance environment constantly. Boards and Chief Executive Officers of NSOs must oversee and manage their high performance culture and environment. Sport NZ and HPSNZ are also responsible for ensuring that NSOs can deliver on their obligations. Reviews should be done at different times in the cycle not just at the end of campaigns or when there has been bad behaviour or a failure to achieve results. Given the importance of Elite Athletes to NSOs, formal exit interviews, preferably by an independent person, should be conducted for all Elite Athletes and the information be made available to the Chief Executive and Board.<sup>216</sup>
15. **Dispute resolution.** Mediation should be prioritised as a means of resolving disputes not able to be addressed through internal mechanisms to deal with issues and disputes.

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<sup>215</sup> The ‘who’ can be more important than the ‘what’. Timing is also important. Inherent to making a difference is knowing the Elite Athlete and picking the moment. The example was given to me of a member of team management saying something to a player that resonates and makes a real difference to that player. In fact, it might be something that has been said to the player previously, but the timing was not right.

<sup>216</sup> An exit interview may be the one time that Elite Athletes, free from the burden of selection, may be truly open and honest about their experiences within the sport. That is an opportunity that should not be missed.

## 10. FUNDING MODEL

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All Sporting Organisations are focused on providing for the training and competition needs of their Elite Athletes, but a shortage of funding is an issue every Sporting Organisation faces. New Zealand's size and location make it harder for our Elite Athletes to compete on the world stage. These challenges are not going to go away. They are likely to increase over time.

In these circumstances it is right to question whether the current vision of success is the right one and whether the available resources are being distributed in the best way to achieve the goals set. There needs to be a common understanding of who is responsible for funding, service delivery and programme leadership.

At one extreme, the funding model could be one where money is allocated to NSOs on the basis of agreed criteria. Under this approach HPSNZ would have no facilities, only a small handful of personnel and no overheads. NSOs would be entirely responsible for all aspects of their high performance environments. At the other extreme is a centralised model where all high performance participants (including Elite Athletes) in selected sports are contracted to a central body, which is then responsible for their rights and welfare.

The current model is a hybrid one where funding is allocated directly to NSOs but HPSNZ centrally contracts service providers and other personnel to provide direct assistance to NSOs, teams and athletes.<sup>217</sup> The detail relating to the current HPSNZ funding model, including its perceived shortcomings, is set out in further detail in Appendix 7 but, in terms of a discussion on alternative models, the reality of the current model is that, while sustainable high performance is a goal, the key driver is winning medals at upcoming pinnacle events.

### **What is the optimal model going forward?**

In my view, the preferred approach to devising a funding model would be a clear definition of what success looks like followed by an assessment of the needs of the high performance system to deliver that success. Participants (including Elite Athletes) would be at the heart of this process. This is in contrast to the current approach, where the government provides a fixed envelope of funds and an instruction to HPSNZ to distribute the available funding as equitably as it can in accordance with its objectives as set out in its constitution.

A needs based approach would require a government prepared to listen and Sporting Organisations able to articulate not just the needs of high performance sport but also the sporting, health, social and other benefits which sport in general, and high performance sport in particular, contributes to society as a whole.

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<sup>217</sup> Of HPSNZ's 121 full time employees I was told only 12 are 'back office' with the remainder either embedded or 'directly impacting' athletes, coaches or NSOs. I was also told that 93 cents in every dollar HPSNZ receives is allocated to sports.

The story that Sporting Organisations are able to tell is a rich and layered one that is much more than New Zealand's relative position on the medal table. There is a need to go beyond the 'small country battling against the odds' to capture the human stories and histories of our Elite Athletes. Elite Athletes past and present have stories woven into the fabric of our society which are a source of inspiration and national pride.

A number of Sporting Organisations are looking at ways to tell these stories better and connect Elite Athletes not only into the sporting communities they come from but also into the wider community. Many of the Elite Athletes I spoke to referred in different ways to the desire to support their sport or give back to their community. How this can best be done should be a priority going forward, in my view, irrespective of whether or not changes are made to the funding model.

Whether funding for the high performance system is increased or not, ultimately decisions have to be made about how the available funding will be spent. Any high performance funding system must have criteria, it must expect performance outcomes and there must be accountability for the funding provided. It is not about sacrificing medals to ensure athletes are happy. It is about defining success in a broader way than New Zealand's position on the medal table and making funding allocation decisions accordingly.

Once success is defined, roles and responsibilities are agreed and funding is allocated, Sporting Organisations need to take responsibility to ensure the people and culture are in place for each high performance environment to deliver these goals and to deliver on their obligations to the people within their environments. That will require resources and a commitment to change where change is required.

# 11. IMPORTANCE OF CULTURE

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Sporting administrators, coaches and other team personnel work hard to achieve the outcomes they believe are in the best interests of their sport and its athletes. They do not set out to infringe Elite Athletes' rights or compromise their welfare, but high performance sport is an intense and complex environment where issues will arise. When they do, the structure and culture of the environment will determine how the issue is dealt with.

In essence culture is about what Elite Athletes 'see, hear and feel' on a daily basis in their sporting environment. It was also described to me as 'what a Sporting Organisation does when no one is watching' and 'the way athletes are treated when the chips are down'.<sup>218</sup> At best, a good culture can generate a sense of real belonging, identity and purpose.<sup>219</sup> At the heart of a sport's high performance culture should be the physical and mental wellbeing of its athletes.

Every Sporting Organisation has its own unique culture evolved over time and based on those that have gone before. Most Sporting Organisations work hard to live the values and practise the behaviours that underpin their culture. So why does it go wrong? Why do we read or hear about a culture 'being toxic' as often as we do?

Culture starts at the top of the organisation and permeates down. Words mean nothing unless supported by actions and behaviour. For example, people, particularly leaders, who are selfish, put their ego first, indulge in put down humour, and are thin skinned or self-absorbed will create a negative and distrusting environment.

Some sports may benefit from a change in leadership style from authoritative ('I am expert, I will tell you what to do') to a more inclusive, authentic approach if they accept the way to get the best out of people is not by simply telling them what to do. Sporting Organisations need to enable Elite Athletes and others in the high performance environment to be actively engaged in decision making and to be able to raise and solve issues about how people behave.

One of the biggest risks Sporting Organisations face is a lack of alignment between the vision and culture of the Sporting Organisation as formally articulated and the culture that exists in reality. In effect, 'we say that we are about people, but everyone knows that all that really matters, and all that we are judged on, is on-field success'.

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<sup>218</sup> The point was made to me that other athletes also take note of how their fellow athletes are treated. For example, while selection (and non-selection) is an inherent part of high performance sport, how this is done is important and if it is done in a way that is perceived to be unfair then that will ripple through the rest of that sport's athletes.

<sup>219</sup> The UK Culture Capture report sets out the characteristics of sustainable winning cultures and critical moments when culture is really tested.

While high performance environments are, and should remain, places where robust and honest conversations can be had, behaviours and words can and do cause significant harm.<sup>220</sup> A coach or a High Performance Manager, for example, needs to consider carefully the impact of what they say and do. No one should be permitted to create or maintain a climate of fear yet recent experiences show that these climates can, and do, exist in New Zealand sport.

NSOs should not rely on one athlete being strong enough to speak and take the consequences. I was told about a saying in Japan that ‘the protruding nail must be hammered down’. If the response to a concern being expressed is to marginalise the speaker (stop being the protruding nail) then the risk is not only that the athlete will not speak again but that no other athlete will either.<sup>221</sup> This is fertile ground for problems to start.

Knowing where the boundaries are does not prohibit honesty, humour or clowning around. Banter, for example, is a critical component of many sports teams. It is one way athletes can relax, communicate and connect with each other.<sup>222</sup>

Bullying or systematic degrading of others is not banter.<sup>223</sup> The humiliation or ridiculing of an athlete in front of his or her peers is not coaching even if it is driven by a perceived need to ‘harden the athlete up’ or create mental toughness or resilience.<sup>224</sup>

The importance of the culture within an environment and its impact on Elite Athletes are not disputed. All Sporting Organisations say they are focused on creating, maintaining and improving their culture. Problems continue to arise, however, such that intervention is required to help NSOs develop performance cultures without compromising the rights or welfare of their Elite Athletes.

The challenge is for Sporting Organisations to remain outward facing and evolving rather than becoming too insular and their thinking being dominated from within.

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<sup>220</sup> The example was provided to me of an athlete told during training that “*you won’t be going to the Games*”. The coach may have been frustrated but did not realise the damage his comments caused or how negative they were.

<sup>221</sup> In the words of the interviewee: “*If that person is silenced or moves on, it creates a vacuum where ‘truly nasty stuff could happen’.*”

<sup>222</sup> As one interviewee put it to me, “*taking the piss out of each other is the currency of many sporting teams*”. Camaraderie is rated in a player survey only behind economic benefit in terms of the most important thing professional rugby players got out of their career.

<sup>223</sup> The 2016 ‘IOC Consensus Statement: Harassment and abuse (non-accidental violence) in sport’ defines bullying (or cyberbullying if conducted online) as “*unwanted, repeated and intentional, aggressive behaviour usually among peers, and can involve a real or perceived power imbalance. Bullying can include actions such as making threats, spreading rumours or falsehoods, attacking someone physically or verbally and deliberately excluding someone*”.

<sup>224</sup> This was the justification advanced by defend a coach’s style which, in turn, was described by the Sporting Organisation as ‘firm but fair’ with no apparent understanding of the effect behaviours by their coach could have on some (but not all) of their Elite Athletes. As I was told by one interviewee, there is a danger if sport normalises bullying behaviour and “*good coaching does not meet that definition*”.

A risk from being too insular is the organisation becomes too focused on outcomes and someone bends the moral compass and looks for a short cut. Checks and clear boundaries have to be in place to prevent this.<sup>225</sup>

The solution is not necessarily Sport NZ or HPSNZ mandating what is and what is not acceptable. Instead, as the UK has done,<sup>226</sup> the Sporting Organisations and participants themselves should be involved in a process that develops guiding principles to provide a framework for what ‘good’ looks like culturally for high performance sport in New Zealand and how to get there.<sup>227</sup> Any such guidelines would respect differences between sports by avoiding being overly prescriptive: the ‘how we achieve’ might be different from sport to sport but the ‘what we are seeking to achieve’ should be the same.

Changing a culture takes time.<sup>228</sup> One leading coach in a team explained that his priority was ensuring the team had the right leaders and culture. It took 6 months to see genuine progress and about 18 months to embed culture such that he felt they had become one united team travelling in the same direction.

Culture influenced his selection in that players living the values and trying to do the right thing by the group were given greater leeway in terms of selection than those that weren’t. Players were treated as grown-ups on the basis they had to make decisions on the field so needed to make decisions off the field as well. The coach would intervene if he felt a player was taking short cuts or not being honest with himself.

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<sup>225</sup> I was told, for example, that UK Sport’s approach where there is clear evidence of cultural problems (for example, bullying, poor behaviour patterns or other unacceptable behaviour) is to send in a four or five person expert panel from across high performance sport to spend 3 full days in the environment to watch training, sit in on their meetings and meet all key personnel individually or in small groups, including the Board and CEO. A report is then generated looking at the structural, functional and cultural opportunities for the sport to improve through a high performance lens.

<sup>226</sup> UK Sport:

- codesigned a framework that identifies what is best practice – with input from stakeholders including athletes, coaches and NSOs;
- benchmarked each NSO against best practice (checklist); and
- developed agreed Action Plans with each NSO to address issues.

<sup>227</sup> While focused on athlete protection, the Daniels report into the culture at US Gymnastics described four aspects of effecting cultural change:

- 1) a strong voice from the top of the organisation;
- 2) clear standards of behaviour;
- 3) provision of sufficient resources to assist in maintaining the standards; and
- 4) accountability.

<sup>228</sup> I was told by a coach that short term fixes come into the mix if their job is on the line; for example, if a ‘dick head’ is 5% better than the next best player a coach may pick the ‘dick head’ if winning is the short term priority. A longer timeframe would not see that player picked on the basis that the ‘dick head’ might win you the odd game on pure talent but will not sustain performance in the long term: *“If you can’t change the (wo)man, change the (wo)man.”*

## 12. DOES IMPROVING ATHLETE WELFARE PROVIDE A PERFORMANCE ADVANTAGE?

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Are Elite Athletes individuals whose holistic needs should be cared for or raw material that can be plugged into a programme with the sole purpose of improving on-field performance?

Is a singular focus on medals and trophies sensible or is that just one outcome of the environment the Sporting Organisation should be seeking to create?

Can a Sporting Organisation achieve both: look after the whole person while achieving the performance goals? Is it really about eliminating excuses for poor performance?<sup>229</sup>

These are complex questions. The solution is not simply to decide that time honoured methods have produced strong results and therefore should not change, but to ask what better results could be produced through a more holistic and athlete centred approach to everything the Sporting Organisation does?<sup>230</sup> A Sporting Organisation that has not adopted such an approach has no evidential or experimental basis on which to dismiss its prospects of succeeding.

Can the link between holistic development of an athlete and performance be demonstrated so as to convince a coach solely focused on performance outcomes that creating an environment centred on the development of the athlete as a person will help the athlete win?<sup>231</sup> Studies suggest that is the case.<sup>232</sup>

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<sup>229</sup> Quoting a former coach, one interviewee referred to the importance of engaging with athletes as “not being about the boat going faster but about eliminating reasons for the boat going slower. If the only thing you can blame is yourself (for your performance) you tend to own it more”.

<sup>230</sup> As it was described by one interviewee, “when athletes are not engaged then the Sporting Organisation is not getting all it can from them and is losing some of the gold”.

<sup>231</sup> One interviewee put it in these terms: “If Athlete A is not worried about his or her pay, where they live, medical insurance etc then his or her absolute focus is on performance. Athlete B is lining up in the semi-final worried that funding will be cut if he or she does not make the final. Who is likely to perform better?” Another interviewee was of the view that what really mattered to Elite Athletes was selection and they developed coping mechanisms to deal with the outcome pressures. The consequences in terms of their funding was very much a secondary consideration.

<sup>232</sup> For example: “There are three central perspectives as to what it means to practice holistic sport psychology. The first perspective is recognizing that nonsport environments may affect athletic performance. For example, tension from an argument with a significant other may manifest itself within the practice or competition environment. The second perspective is recognizing that performing well athletically is facilitated by developing the core of who the athlete is as a person. That is, by developing the individual, they are able to approach excellence in all facets of their life including athletics. The third perspective acknowledges that we as human beings function along four dimensions (behavior, mind, emotions, and physiology), and that seeking behavior change (in the form of improved athletic performance) involves an appreciation for how all other dimensions affect each other” (Andrew Friesen and Terry Orlick, ‘A Qualitative Analysis of Holistic Sport Psychology Consultants’ Professional Philosophies’).

A former Elite Athlete and captain said:

*“A good player does not become a bad player for no reason. In my experience form is often down to injuries or issues at home. You need to dig deeper rather than discard a player in this situation. Put a plan in place to get the best out of them and it’s amazing how often form can quickly turn around as a consequence. There is always an expectation of performance from elite players but some leeway and help should be provided rather than write them off and move on to the next cab off the rank.”*

‘Better people will make better athletes’ is a phrase attributed to Sir Brian Lochore. Whether it is about better people or a focus on the whole Elite Athlete experience, the theory is that a Sporting Organisation which knows, understands and looks after the whole person will get a more complete and better performing athlete.<sup>233</sup>

Sporting Organisations may not expressly set out with the purpose of making better people but, during the course of my review, I was told in many different ways about the realisation that an engaged and respected athlete will perform better: be better under pressure, more motivated, more committed and more able to help themselves or their team win on the field.<sup>234</sup> By developing and listening to the person, the Sporting Organisation or coach is improving the athlete and their experience in the environment.<sup>235</sup>

Not everyone subscribes to this view.<sup>236</sup> Like almost every aspect of high performance sport, there is no one size fits all approach or solution. Furthermore, in some cases, developing life outside of sport may inhibit short term performance outcomes; for example, it may lead to the Elite Athlete retiring or reconsidering his or her commitment to that sport.

While every Elite Athlete is not the same, most of the people I spoke to believe in the link between performance and the way athletes are treated and grow as people, although it may not be an immediate and linear one.<sup>237</sup>

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<sup>233</sup> The All Blacks’ approach was described to me as about ‘moving people’. For some players it is about addressing flaws in their character or behaviour (for example, stop alcohol if leads to bad decision making) and building up a decent human being. For other players it may be about not being too nice – being more assertive, more demanding, not giving of yourself all the time. The essence of it is about the players deciding for themselves what ‘better’ means to them rather than an outsider imposing a moral code or making judgements for them.

<sup>234</sup> For example, I was told: *“If you’re in a better place, be it physically, emotionally, financially you will be able to put more into your sport and get better results. You will also feel better about what you are putting in. I’ve seen so many athletes get disgruntled with sport because they put in so much yet only get stress and debt in the end. It feels good to be valued and feel safe in the choices you make.”*

<sup>235</sup> One interviewee expressed it in these terms: *“Ensuring the athletes have a credible voice around the table allows them to take more responsibility for the environment, processes and outcomes. It stands to empower them and breed a greater sense of respect for the issues and opportunities (for themselves and the environment). All this stuff helps with a strong culture, that grows and embraces confident people, is aligned and focused, allows people to challenge each other etc. This all contributes to environments that can sustain performances over time. Seeing the athletes as key partners/stakeholders is the mindset.”*

<sup>236</sup> For example, some find it patronising for a sport to think it has the capability or the mandate to tell an athlete how to ‘better themselves’, a subjective, hard to measure, value laden concept. One interviewee told me that the key is to separate the sporting from the personal aspect of athletes’ lives, to let the athlete make decisions in relation to their personal life and to help them do what is required to achieve the required level of on-field performance. It is about respecting where the line is.

<sup>237</sup> By way of example only, one interviewee spoke of realising her dream to compete as a full time professional only to *“never play worse in her life”*. After her first year she learned she needed stimulus outside playing and training. She achieved this by teaching English, learning a language and doing postgraduate study.

Will the better treatment of Elite Athletes lead to better performance? Some people I spoke to were absolutely convinced of that proposition; others were not so sure.

The outcome will depend on the athlete, the sport and the circumstances. For example, will an Elite Athlete perform better or worse if his or her funding will be cut as a consequence? Some may embrace the pressure and perform better when their livelihoods are on the line but for others it may be a distraction or performance inhibitor and their performance levels may drop.

Sporting Organisations need to ask themselves why employers in the business world spend so much time and resource creating the right environment for employees to thrive while so many sports appear focused almost entirely on short term high performance outcomes.

For some Elite Athletes the threat of a funding cut just makes a vulnerable and uncertain situation worse, while for others funding is a secondary consideration to selection and/or other performance goals. Some believe that certainty of funding can lead to complacency. For others it is irrelevant: they would do what they do regardless of whether they are funded or not. All Elite Athletes have to develop coping strategies to deal with negative thoughts or the fear of a negative outcome, but the fact that uncertainty over future funding might build resilience is not of itself a justification for retaining it going forward.

What is certain is that focusing on the Elite Athlete as a person and the experience they have in the environment can only help them develop as a person. If that is an aim in itself, then progress is made whether or not there is a linear correlation with performance. A better person will not perform worse and, in some cases, a more rounded, secure, engaged individual will perform better.

So, while some Elite Athletes can and do perform under the pressures of the current environment, to the extent this pressure can be alleviated is likely to be a positive development for the athlete as a person and, in some cases, their performance outcomes as well.

## 13. PRIORITY AREAS

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High performance sport is constantly changing, adapting and evolving. All participants are constantly looking for the small improvements because a small improvement can be the difference between whether or not the performance goal is achieved.

How an NSO treats and engages its Elite Athletes should be viewed in this light. There is no one way to do things and the focus should be on how we can do better. The past can be a guide but cannot be determinative in how a sport does things; otherwise progress would never occur.

### **Funding Model**

HPSNZ is currently reviewing its funding model. In doing so, it must genuinely take into account both the performance and welfare needs of its participants including Elite Athletes.<sup>238</sup>

While high performance environments need to be accountable and HPSNZ must make difficult decisions, taking into account the needs of NSOs and Elite Athletes across a range of sports, concerns were expressed to me that the current HPSNZ funding model is causing or exacerbating some of the issues relating to Elite Athlete welfare. That is because the funding model creates a focus on short term performance goals, inadvertently at the expense of the holistic or longer term development of the athlete and the sport as a whole.<sup>239</sup>

Anxiety and uncertainty are not the best preparation for pinnacle events, in my view.<sup>240</sup> While the best Elite Athletes embrace pressure and develop coping mechanisms to deal with adversity, that does not mean that a short term, results based funding model is optimal or best practice. The focus should be on using the available resources to provide as much certainty and support for Elite Athletes as possible. Importantly, Elite Athletes should be directly involved in this process as opposed to Sporting Organisation administrators developing a model that they believe best meets the systems performance needs within budgetary constraints.<sup>241</sup>

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<sup>238</sup> One interviewee said: “Sport should be about caring about people and looking after each other. It’s not okay to have a government funded system that leaves people broken.”

<sup>239</sup> One interviewee described it in these terms: “The reality for these sports is that they are judged on short term performance outcomes and if I am an HP coach I effectively have a ‘noose around my neck’ – my sport’s future funding is dependent on my athletes and teams delivering on the expected performance outcomes. Is it realistic for a coach in this position to spend time developing the whole athlete?”

<sup>240</sup> I was asked who was likely to perform better: an athlete who is not worried about his or her pay, where to live, or medical insurance, or an athlete lining up in the semi-final worried that funding will be cut if they do not make the final?

<sup>241</sup> I was told that athletes were not consulted or involved in the development of the current PEGs funding system.

If the outcome of a more certain funding model is that Elite Athletes will relax in a comfort zone, bank the benefits and not perform, then the sport has not selected the right athlete in the first place.<sup>242</sup> For even the richest of sports, money is not the motivator to win or perform well.<sup>243</sup> However, a lack of funding and/or uncertainty over funding can, in my view, inhibit performance.

Funding decisions are complex. Changing the funding model will have consequences to others in the high performance system; for example, if longer term funding decisions are made, then that will reduce the ability of HPSNZ to reward short term success and may result in some Elite Athletes who are performing missing out on funding altogether. If the sum of money available is not increased, then some sports and some Elite Athletes will need to be prioritised over others.

These and other considerations should be addressed by HPSNZ as part of its 2030 Blueprint. What is critical, in my view, is that the funding criteria are determined and communicated in an open and transparent way so that all participants know where they stand and can make decisions accordingly. And just as crucially, HPSNZ's Blueprint must clearly define what success is and that needs to be broader than purely medal count operating under the guise of 'sustainable high performance'.

### **NSO Capability**

If the decision is taken to adopt a more holistic approach, then it is not enough to simply impose new or additional KPIs on NSOs without giving them access to the resources and expertise they need to effectively introduce and deliver those obligations.

If the system is going to value more than just performance outcomes, NSOs need appropriate structures, qualified and experienced people, and the necessary policies and processes. What is required is a better understanding of how the high performance system is working currently within that sport and what changes are required given the constraints the sport is operating under. Having consulted and agreed the change required, the NSO needs to be upskilled and resourced accordingly.

### **Management and Review**

The structure of most NSO high performance environments is a coach reporting to a High Performance Director, who reports to a Chief Executive, who reports to a Board. Each layer must take its responsibilities seriously in terms of the management and oversight of people, culture and environment, including Elite Athlete welfare.

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<sup>242</sup> As one interviewee put it, "*athletes love to compete, they love to win. The goal for the majority is to be able to retire not in debt because they have been chasing a dream, not to get rich in the process. A longer term funding approach is therefore more beneficial provided you identify and support the right athletes*".

<sup>243</sup> A leading agent told me that a \$1 million per player bonus to win the Rugby World Cup would not improve the All Black team's prospects of winning and that win bonuses in rugby are more about a fair share of the reward than an incentive to win. Money is not the motivator to win or perform well.

While the Board and CEO need to have an oversight role, the High Performance Manager, in particular, needs to be of sufficient status and experience to be able to properly assess and manage the sport's performance environment.<sup>244</sup> If not, the sport may need to bring in an external person who can drive these initiatives.

### **Athlete Support**

There is a range of support services Elite Athletes need in order to perform to their potential. What these are and how these are provided need to be determined on a sport by sport basis with the priority being to match, to the greatest extent possible, the skills and personality of the provider with the needs and personality of the athlete or team.<sup>245</sup>

While there are benefits of a centralised model, where possible the relationship should be between the NSO and the provider. NSOs have to have the resources and skills to provide for their coaches and Elite Athletes and any gaps in their ability to do so should be filled rather than having this as part of the reason for centrally providing this resource for some, but not all, members of the NSO's high performance environment.

### **Development Model**

There are real benefits to athletes taking responsibility for their own campaigns to the extent possible. Such an approach empowers the athlete, but it also teaches them skills and provides experiences that will serve the athlete later in life. I heard examples of the best Elite Athletes earning the right through their performances to tailor make their own campaigns. The question each sporting environment should be asking is whether, and at what stage, does a mature athlete or team of athletes have the experience and capability to manage their own campaign and how can they be supported effectively to do so?

### **Communication**

Many administrators, coaches and athlete support personnel may need upskilling in terms of their coaching and communication styles to better understand the welfare needs of Elite Athletes.

Coaches will and should drive their athletes hard to get the best out of them. Coaches also need to know that there is a line. Being passionate, committed and wanting what is best for the team or athlete is not an excuse for crossing the line. You cross the line when your behaviour becomes demeaning or too negative.<sup>246</sup>

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<sup>244</sup> High Performance Manager is a critical role and some I interviewed praised individuals who were making a difference in their sport. It was also suggested to me that there is a lack of depth and experience across High Performance Managers in New Zealand, and if this is correct it needs to be addressed.

<sup>245</sup> For example, in terms of mental skills, each Major Association has a provider but what works best for the BLACKCAPS is if each player finds their own provider which NZ Cricket funds. This approach is the best one for the BLACKCAPS on the basis that the personal relationship with the mental skills coach is fundamental so no one person will work for everybody.

<sup>246</sup> One interviewee put it this way: *"To win is tough; you have to be ruthless and must operate in an environment where you are constantly challenged and someone else holds you accountable (generally the coach). But you don't have to be an arsehole*

## Athlete Voice

A collective bargaining agreement is just a name for a document that sets out the collective terms and conditions of employment or engagement for Elite Athletes, whether they are employees, contractors or volunteers.<sup>247</sup> As such, it does not depend on a sport earning commercial revenue per se.<sup>248</sup> All sports receive funding and how that is allocated is something that athletes and their representatives believe they should have the right to have a say in.<sup>249</sup>

The mechanism for the athlete's voice does not need to be a Players Association. Sport NZ or HPSNZ could fund a separate body to perform this role as UK Sport has done with the BAC. Both these bodies have the advantage of being independent but, depending on the role the body is to play, other alternatives are to set up Athletes' Commissions within each sport or an athlete representative group in the way Rowing NZ has done.

Whatever the mechanism:

1. it needs to be athlete driven and supported, independent and have the funding it needs to carry out its role effectively and autonomously. It is not enough, in my view, just to set up a body to consult with but to give that body no rights or no remedy if its views are disregarded or ignored;
2. Sporting Organisations and those running the athlete body need to agree how they will work together in the best interests of that sport. For a Sporting Organisation, having an athlete representative body to discuss and agree how to prioritise available resources can be a key risk mitigation exercise for that sport: the Sporting Organisation can demonstrably show that it has acted reasonably and responsibly in terms of its duty of care to Elite Athletes if it has undergone a genuine negotiation process with the player representative body; and
3. those running the athlete body need to convince the Sporting Organisations they genuinely care about creating and maintaining a performance environment that will allow their members to achieve their performance goals. Currently the level of mistrust is a real barrier, preventing even a meaningful discussion from taking place. Sporting Organisations should be working together with their participants

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*to be tough and ruthless in your quest for success. People matter. Transparency and trust are the two most critical elements to success."*

<sup>247</sup> For example, NZ Cricket's agreement is called the Master Agreement and its professional players are independent contractors. Hockey NZ signs a Memorandum of Understanding with its players. The first MOU was signed in 2011 when the funding available to athletes was limited to HPSNZ grants and it soon hopes to sign an MOU setting out the terms whereby its Elite Athletes are semi-professional.

<sup>248</sup> At the time the WHITE FERNS' MOU was signed in 2016 there was no commercial revenue directly attributable to women's cricket in New Zealand.

<sup>249</sup> I note, for example, that a German athletes group (not linked to the German Olympic Committee's Athletes' Commission) is claiming that athletes should directly receive a share of Olympic Games revenue.

in the best interests of the sport as a whole. History would suggest there will be teething issues but that is not a reason to avoid the issue.<sup>250</sup>

## **Culture**

NSOs should focus on creating trusting, respectful and responsive performance environments. The motivation should not be just because it is the right thing to do by the Elite Athletes but because a positive, supportive culture is more likely to enable the athlete to perform to their potential.

Each NSO needs to articulate behaviours and then ensure all within the organisation live up to them. Elite Athletes need to be clear as to what is or is not acceptable and hold themselves and their peers to those standards. The NSO will get a much higher level of engagement and ownership if Elite Athletes have had a say in what those standards are.

## **Diversity**

The essence of sport is that it is a meritocracy. It needs to cater, including at the elite level, for people from diverse backgrounds, ethnicities and sexual orientation. Diversity needs to be genuinely embraced and New Zealand sport is in a great position to lead the way in doing so.

Cultural issues also need to be addressed within a high performance environment, for example, a deference to authority and elders which can see players agree to rules and demands when they may actually object to them.

Women's sport is growing. The New Zealand team for the Rio Olympics had, for the first time, more females than males. Female team sports and competition pathways are fast evolving. Netball has provided a long-standing semi-professional environment for its Elite Athletes and rugby, cricket and hockey are now doing the same. This requires consideration of policies and approaches customised for the female athlete; for example, rugby has introduced the first sport specific maternity policy<sup>251</sup> in response to the specific needs of female athletes in relation to having a family.<sup>252</sup>

One of the issues raised in my interviews was the lack of women in key coaching and high performance roles. While there has been a push for women in governance and leadership roles, this has not permeated down into the high performance environments for Elite Athletes.

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<sup>250</sup> Both rugby and cricket have tried in different ways to circumvent their respective Players Associations in the past but all they really achieved in attempting to do so was uniting the players behind their association and the people running it.

<sup>251</sup> The policy provides for travelling child care support to a capped amount every year.

<sup>252</sup> Ameliaranne Ekenasio was reported in a recent media article as saying: "There are so many elite athletes who do wait to have kids because it is so daunting to think about having a kid and coming back and I think it's because of the way we treat people who come back. It's just the way it is and it's really unfortunate because I definitely feel like you have to choose between having a family and being an elite athlete."

This is particularly the case with female teams or athletes. While there are no barriers to males coaching female athletes, I was informed that female athletes relate differently, communicate differently, give feedback differently and have different emotions from their male counterparts. A management team needs to cater for these differences.<sup>253</sup>

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<sup>253</sup> There were a variety of views expressed. While everyone agreed that there does not need to be a female in every role in a female sport, there do need to be female members of those management teams.

# APPENDIX 1: TERMS OF REFERENCE

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## Background

The Government invests in high performance sport (through High Performance Sport NZ) to ‘enrich and inspire’ the nation through the achievement of New Zealand athletes on the world stage.

While each sporting environment is different, all sports need to create and maintain high performance environments that respect the rights of Elite Athletes<sup>254</sup> and allow them to perform to their potential. The aim is peak performance but not at the expense of Elite Athlete Welfare<sup>255</sup>.

The way sports<sup>256</sup> interact and engage with their Elite Athletes is one aspect of the high performance environment that can affect athlete wellbeing and performance.

Sport NZ is undertaking a Sport Integrity Review, which covers, amongst other things, the rights of Elite Athletes and Elite Athlete Welfare. This project feeds into Sport NZ’s wider Sport Integrity Review.

## Purpose

The purpose of this project is to explore issues relating to Elite Athlete rights and Elite Athlete Welfare as part of Sport NZ’s Sport Integrity Review.

The environment within which National Sport Organisations (NSOs) and High Performance Sport NZ (HPSNZ) interact with Elite Athletes is complex and may differ significantly from sport to sport. This project represents a first step in understanding the issues and identifying potential improvements in terms of NSOs’ and HPSNZ’s interaction and engagement with Elite Athletes. The purpose of the project is to help drive informed future decision making not to mandate or impose solutions.

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<sup>254</sup> “Elite Athletes” refers to athletes who have, or are likely to, compete at the Olympics/Paralympics or World Championships in their chosen sport.

<sup>255</sup> “Elite Athlete Welfare” refers to athlete wellbeing on and off the field including their health, safety and life outside of sport.

<sup>256</sup> The focus of the paper is on HPSNZ targeted sports, namely, athletics, rowing, yachting, cycling, canoe sprint, equestrian, rugby 7s (male and female), netball, hockey (womens), Snow Sports and Paralympics NZ. The paper will also consider sports that have a collective bargaining agreement in New Zealand (rugby, netball, cricket and football).

## **Scope**

The paper will:

- define and summarise Elite Athletes' rights and welfare needs in terms of their relationship with NSOs and HPSNZ;
- outline the current approach and the issues HPSNZ targeted sports face in terms of their relationships and engagement with Elite Athletes;
- outline the current approach and issues selected other sports face in terms of their relationships and engagement with Elite Athletes;
- summarise how sports that have a collective bargaining agreement in New Zealand currently engage and interact with their elite athletes;
- explore whether better engagement and treatment of Elite Athletes can lead to improved performance;
- set out the characteristics of a best practice athlete engagement and welfare environment;
- identify whether change may be required to the approach taken by HPSNZ targeted sports and, if it is, set out the reasons why;
- identify alternative options going forward;
- identify what is required to successfully implement each alternative; and
- recommend next steps, including steps that could be considered as part of Sport NZ's Sport Integrity Review.

## **Personnel**

A paper detailing the project's findings and recommendations will be written by Stephen Cottrell. The views and opinions expressed in the paper will be those of the author which may or may not accord with the views and opinions of Sport NZ or any particular NSO or athlete.

Stephen will liaise with Sam Anderson of Sport NZ and may speak to selected third parties with the prior approval of Sport NZ.

## **Timing**

The intention is to have a first draft of the paper to submit for review by Sport NZ by mid September 2018.

## APPENDIX 2: LIST OF INTERVIEWEES

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I interviewed 107 people, of whom 37 were women and 80 men. The people I interviewed can be categorised as:

- Elite Athletes (25)
- Athletes' Commission representatives (2)
- Coaches or NSO team support personnel (12)
- High Performance Managers (7)
- NSO CEOs and other personnel (22)
- HPSNZ Board, staff or consultants (11)
- Sport NZ (3)
- NZ Olympic Committee (4)
- Paralympics NZ/International Paralympic Committee (3)
- Players Associations/Athletes Federation (9)
- Drug Free Sport NZ (1)
- Sports Tribunal (1)
- Lawyers/agents/managers/other (7)

The Elite Athletes included 17 women and 8 men, of whom 10 were from netball, hockey, football and rugby and the remainder from swimming, BMX, rowing, athletics, yachting, equestrian, canoe racing, shooting and snow sports. All of the Elite Athletes are still competing with the exception of two recently retired rugby players and one rower. In addition, a number of former Elite Athletes are included in the other categories listed above.

# APPENDIX 3: SUMMARY OF NZ LEGISLATION AND ATHLETE CHARTERS

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## Health and Safety

The Health and Safety at Work Act 2015 (HSWA) is New Zealand's key work health and safety legislation. It sets out the work health and safety duties that must be complied with. WorkSafe New Zealand is the work health and safety regulator.

All work and workplaces are covered by the HSWA unless specifically excluded (for example, volunteer associations that do not have employees). This means that all Sporting Organisations who employ staff will be covered even if their athletes are not employees.

The obligation is on a 'person (or organisation) conducting a business or undertaking' (PCBU) to take all practical steps to ensure workers' safety. A worker is an individual who carries out work in any capacity for a PCBU.

A worker may be an employee, a contractor or sub-contractor, an apprentice or a trainee, a person gaining work experience or on a work trial, or a volunteer worker.

Workers also have duties to take reasonable care to keep themselves and others healthy and safe when carrying out work.

Under the HSWA, there is a duty to 'ensure health and safety' across all workplaces and activities. This means that the organisation and its directors must:

- eliminate risks to health and safety so far as is reasonably practicable; and
- (if this is not reasonably practicable) minimise those risks so far as is reasonably practicable.

The meaning of what is 'reasonably practicable' requires a balancing of the nature and extent of the particular risk against the costs and practicalities of protecting against that risk.

The balance continues to be weighted heavily in favour of health and safety. Accidents are looked at in hindsight, and, when serious harm has occurred, cost seldom justifies a decision not to do something that could have prevented the harm. For costs to be relevant, they will need to be 'grossly disproportionate' to the risk (this is expressly stated in the HSWA).<sup>257</sup>

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<sup>257</sup> Section 22 of the HSWA.

WorkSafe New Zealand is primarily responsible for monitoring and enforcing compliance with the HSWA. What steps it will take will depend on the circumstances, including the level of risk or potential risk to health and safety, the willingness of the organisation to comply with the law, and any harm that has been suffered. Options include issuing notices (for example, improvement notices or prohibition notices) or prosecution.

The decision to prosecute is in turn influenced by a number of factors including whether there is sufficient evidence to provide a reasonable prospect of conviction and whether prosecution is in the public interest. The HSWA also allows a person to bring a private prosecution.<sup>258</sup> Penalties can include fines and imprisonment for the most serious offences.<sup>259</sup>

### **Worksafe Bullying and Harassment Guidelines**

Bullying at work is defined as repeated and unreasonable behaviour directed towards a worker or a group of workers that can lead to physical or psychological harm.

Workplace bullying is not:<sup>260</sup>

- one-off or occasional instances of forgetfulness, rudeness or tactlessness;
- setting high performance standards;
- constructive feedback and legitimate advice or peer review;
- a manager requiring reasonable verbal or written work instructions to be carried out;
- warning or disciplining workers in line with the business or undertaking's code of conduct;
- a single incident of unreasonable behaviour; or
- differences in opinion or personality clash that do not escalate into bullying, harassment or violence.

Businesses and undertakings have a responsibility to appropriately and effectively deal with bullying within their environments.

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<sup>258</sup> A private prosecution can be brought if the person bringing the prosecution has notified the regulator of their interest and the person has been informed that:

- the regulator has not and will not be bringing a prosecution or issuing an infringement notice under the Act in relation to the same incident; and
- a regulatory agency has not and will not be bringing a prosecution under any other Act in respect of the same incident (sections 142 and 144 of the Act).

<sup>259</sup> The most serious offences are:

- reckless conduct in respect of duty, without reasonable excuse, that exposes an individual to a risk of death or serious injury or illness (section 47);
- failure to comply with a duty that exposes an individual to a risk of serious injury, serious illness or death (section 48); and
- failure to comply with a duty (section 49).

<sup>260</sup> WorkSafe New Zealand Guidelines.

## Protected Disclosures Act

The Protected Disclosures Act 2000 applies to employees (which includes former employees, contractors and volunteers). An ‘employee’ makes a protected disclosure (‘whistle blowing’) when they report serious wrongdoing in the workplace that they reasonably believe is true or likely to be true.

This must be done in line with workplace policies for reporting serious wrongdoing. If there are no policies, then it should be reported to the head of the organisation.

If an employee makes a protected disclosure under the Protected Disclosures Act, their employer can’t take disciplinary (or other action) against them.

## Olympic Charter

A rights based approach is also consistent with the Olympic Charter, which includes seven ‘fundamental principles of Olympism’.

The fourth principle states that: *“The practice of sport is a human right. Every individual must have the possibility of practising sport, without discrimination of any kind and in the Olympic spirit, which requires mutual understanding with a spirit of friendship, solidarity and fair play.”*

The Olympic Charter does enshrine, however, the right of Sporting Organisations to control their sports<sup>261</sup> and does not expressly refer to the need to engage or consult with their athletes before doing so to the extent not encapsulated by ‘the principles of good governance’.

The IOC recognises the negative impacts caused by ‘non-accidental violence’ to athletes through harassment and abuse. The IOC recognises the rights of all athletes to participate in ‘safe sport’, which is defined as *“an athletic environment that is respectful, equitable and free from all forms of non-accidental violence to athletes”*.<sup>262</sup> While there is an acceptance of the harm caused by harassment and abuse, *“these issues represent a blind spot for many sport organisations through fear of reputational damage, ignorance, silence or collusion”*.<sup>263</sup>

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<sup>261</sup> The fifth principle of Olympism states: *“Recognising that sport occurs within the framework of society, sports organisations within the Olympic Movement shall have the rights and obligations of autonomy, which include freely establishing and controlling the rules of sport, determining the structure and governance of their organisations, enjoying the right of elections free from any outside influence and the responsibility for ensuring that principles of good governance be applied.”*

<sup>262</sup> ‘IOC Consensus Statement: Harassment and abuse (non-accidental violence) in sport’, 2016.

<sup>263</sup> The 2016 ‘IOC Consensus Statement’ recognises that *“all ages and types of athletes are susceptible to these problems but science confirms that elite, disabled, child and lesbian/gay/bisexual/trans-sexual (LGBT) athletes are at highest risk, that psychological abuse is at the core of all other forms and that athletes can also be perpetrators”*.

Clear guidance is provided to sporting organisations in terms of the steps they need to take, including implementing policies and procedures for safe sport that:

- state that all athletes have a right to be treated with respect and protected from non-accidental violence;
- state that the welfare of athletes is paramount;
- identify who has responsibility for implementation;
- specify what constitutes a violation and specify the range of consequences;
- detail a response system for handling athlete/whistle blower concerns and complaints, with reporting and referral mechanisms and a neutral resolution mechanism; and
- provide details of where to seek advice and support for all parties involved in a referral or complaint.

### **IOC and WADA Athletes Charter**

The IOC is in the process of drafting an Athletes Charter setting out the rights and responsibilities of athletes, together with a remedy for breach. The intention is that *“anyone who signs up to the Olympic Charter will have to abide by the Athlete Charter, and every national Olympic Committee and sports federation will have to protect the rights of its athletes”*.<sup>264</sup>

The draft IOC Athletes Charter has five key topics: integrity and clean sport; governance and communication; career and marketing; safeguarding; and sports competition. For each topic it sets out a series of athlete ‘rights’ and ‘responsibilities’. In terms of rights, these include the right to athlete representation in all athlete related matters, the right to access protected whistle blowing programmes, the right to a dual career, the right to receive educational materials and the right to physical and mental health support.<sup>265</sup>

WADA has established an Athletes Committee. The stated role of the 17 person body is to *“serve as the voice of clean athletes, encouraging integrity and fairness for sport and athletes”*. The WADA Athletes Committee is in the process of drafting an Athletes Charter setting out the rights of athletes who are subject to testing.

### **World Players Association Charter**

The World Players Association was established in December 2014 and purports to represent over 85,000 professional athletes.

The World Players Association has issued a declaration stating that *“sport must now be run in partnership with the players and sport must act proactively to prevent and minimize and address any adverse human rights impacts”*.<sup>266</sup>

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<sup>264</sup> Sarah Walker, a member of the IOC’s Athletes’ Commission, in an interview on 14 August 2018.

<sup>265</sup> <https://www.olympic.org/athlete365/athletecharter>

<sup>266</sup> World Players Association Universal Declaration of Player Rights.

According to the World Players Association Universal Declaration of Player Rights every sport must:

- work in partnership with the players to develop a strategic vision for their sport;
- acknowledge the acute impact of any failure to respect the fundamental human rights of the player given the highly skilled and inherently short term nature of the athletic career;
- acknowledge that any reliance on or application of the ‘autonomy’ or ‘specificity’ of sport or any restraint or limitation imposed on a player in the exercise of his or her profession does not override the fundamental human rights of the player and can only be given legal effect if necessary and through collective bargaining and social dialogue; and
- ensure that the internationally recognised human rights of the player including as contained in the World Players Universal Declaration of Player Rights are legally adopted within the constituent documents of their sport or pursuant to a collective bargaining agreement.

These rights are further expanded upon and include:

- the right to organise and collectively bargain. Every player has the right to organise and collectively bargain. Every player has the right to form and join player and athlete associations and unions for the protection of his or her interests;
- the right to share in economic activity and wealth. Every player has the right to share fairly in the economic activity and wealth of his or her sport which players have helped generate; and
- protection of name, image and performance. Every player is entitled to have his or her name, image and performance protected. A player’s name, image and performance may only be commercially utilised with his or her consent, voluntarily given.

## APPENDIX 4: HPSNZ TARGETED SPORTS

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Under the current high performance system, the key relationships relating to Elite Athletes' rights and welfare are between the Elite Athletes and NSOs and their coaching and team/high performance support personnel.

Paralympics NZ currently performs the NSO role in whole or part for swimming, shooting and cycling but plans are in place for the relevant NSO to adopt this role by 2020. NZOC and Paralympics NZ have Elite Athletes within their care as part of teams attending pinnacle events, while Sport NZ and HPSNZ currently have no direct relationship or forum to engage with Elite Athletes other than through HPSNZ support personnel who are embedded within the NSO high performance environment.<sup>267</sup>

Each NSO must assess the issues relating to Elite Athletes' rights and welfare in the context of their own sporting environment. While high performance environments have issues in common, there are clearly significant differences which will impact on each sport's approach.

NSOs have different numbers of Elite Athletes and different levels of physical access to them.<sup>268</sup> For example, yachting relies heavily on sail and boat technology but sailors also have to contend with the vagaries of wind, tide, ocean current and other variables. The levels of support and expert assistance they require therefore go well beyond their own physical and mental preparation needs. Athlete safety is a key issue for snow sports given the inherent danger involved in competitors racing and/or performing the routines they do.<sup>269</sup> Elite Athletes in both these sports have to spend large parts of the year overseas to achieve meaningful competition, which creates issues in terms of their engagement and treatment by their NSO.<sup>270</sup>

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<sup>267</sup> While all Sporting Organisations can at times struggle to get a timely or meaningful response given their current Elite Athletes' focus on their own training and performance needs, the lack of any direct relationship between Sport NZ and HPSNZ was heightened to me by the difficulties both organisations had in trying to arrange a time for Elite Athletes to speak to me as part of this review.

<sup>268</sup> For example, New Zealand Rugby has approximately 500 professional or semi-professional players while swimming estimates that up to eight swimmers could attend the Tokyo Olympics in 2020. In terms of access, some of equestrian's Elite Athletes have full time bases overseas, while rowers are assembled in Cambridge on a full time basis.

<sup>269</sup> I was told that if an athlete is capable of, or ready to try, a new trick (as determined by his or her coach, medical, strength and conditioning personnel in conjunction with the athlete) then it is introduced progressively – trampoline to air bag to soft snow (spring progression camps) to competition. One Elite Athlete competitor told me that he had seen overseas coaches who would push their athletes into doing routines or tricks even if the conditions were not conducive to doing so. For him, that had to be his choice as an athlete. The conditions had to be right and he had to be feeling right.

<sup>270</sup> For example, snow sports has approximately 30 Elite Athletes covering all skiing and snowboarding disciplines. Having athletes based all around the world in different disciplines is both challenging and expensive (logistics, technicians, medical support, discipline specific coaches). Most of snow sports' Elite Athletes are based in the northern hemisphere from late November to the end of April each year.

There are different approaches amongst HPSNZ sports in terms in how to best prepare and train their Elite Athletes. At one end of the spectrum are sports who have a centralised model where athletes are required to live and train in a central location.<sup>271</sup>

Rowing NZ, for example, currently has 54 rowers in a centralised programme based in Cambridge. It is a full time commitment with athletes training two or three times a day. Their training needs and requirements are all met, as are their costs when they travel. Each athlete receives a PEG or a grant from Rowing NZ to cover their living costs. The benefits of the programme include internal competition and having all key personnel (CEO, staff, performance personnel and rowers) under one roof.

At the other end of the spectrum a number of HPSNZ targeted sports do not believe a centralised programme works best for them. I was told some of New Zealand's competitive advantage lies in being nimble and flexible: small, tight, trusted agile teams operating within a larger high performance programme.<sup>272</sup> I heard many examples of the benefits of Elite Athletes taking responsibility for their own preparation and campaigns in terms of skills taught and experience obtained.<sup>273</sup>

Elite swimmers are swimming 2.5 hours or 8 to 11km a session morning and night plus a gym session in between. I was told that it can be lonely and extremely tedious submerged in a pool looking at a black line day after day. Swimming is an example of a sport that is moving from a centralised model<sup>274</sup> to a decentralised model<sup>275</sup> where Elite Athletes and their coaches are supported within their own environments.<sup>276</sup>

In snow sports the coach and athlete relationship is critical given the one on one environment they train and compete in, often in isolation and away from home. If the relationship is not a good fit, then it must be and is addressed.<sup>277</sup>

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<sup>271</sup> Most centralised programmes are in Cambridge (cycling, rowing, canoe racing, triathlon) and Auckland (yachting, hockey, canoe racing).

<sup>272</sup> As set out below, some sports naturally lend themselves to this approach, while it will be much more challenging in other environments. The key issue to weigh up is the benefits from a highly controlled, prescriptive environment as opposed to the benefits of individually tailored and operated programmes.

<sup>273</sup> While this approach works for leading athletes in some sports, the benefits of a centralised programme for some sports and the costs, I am told, of providing a bespoke service mean that this approach will not work for all Elite Athletes.

<sup>274</sup> The reality for Swimming NZ was that their centralised programme was funding and supporting athletes who were prepared to relocate to Auckland rather than necessarily the best athletes. Swimming NZ has therefore adopted an approach solely based on what works for each Elite Athlete.

<sup>275</sup> A Swimming NZ manager is quoted in the media as saying: *"We're looking at what is going to work best for individuals, where the best programme is for them, who is the best coach for them and what is the best environment."*

<sup>276</sup> I was given the example of an athlete based in a centre outside of Auckland who was going to university, and had a great coach, family and friends support network. Swimming NZ's approach is that there is no reason to come to Auckland so stay where you are and we will support you as best we can.

<sup>277</sup> I was told that the Performance Director and CEO would address any relationship issues and if the conflict is not resolvable then snow sports would either change the coach or exit the athlete from the programme (with that decision based on who will have the greatest long term benefit for the sport).

Athletics NZ is also operating a decentralised programme with their Elite Athletes individually competing in international competitions outside of the Commonwealth or Olympic Games. Athletics NZ provides its Elite Athletes with assistance and support where they can and leave the athletes free to contract their own sponsors and earn their own prize money.

One Elite Athlete spoke of feeling ‘precious’ in her environment. She was known, valued and supported. For her the risk of a larger, centralised environment was that it becomes sterile. I was also told that the one size fits all approach is particularly problematic for disabled athletes given the range of disabilities they have.

All Sporting Organisations work at their relationships with their athletes, particularly their Elite Athletes, who are the pinnacle of their sport. That engagement varies from informal discussions to formal consultation.<sup>278</sup> Most have a leadership group or some form of athlete advisory group. All have review mechanisms, particularly after major campaigns. Some do exit interviews (but most do not) with their Elite Athletes when they leave the sport.

Getting athletes to engage and respond can be an issue for many sports given the time athletes are away and their focus on their own training and competition needs.<sup>279</sup> There can also be a challenge in Elite Athletes having the time, ability or skills to represent other athletes.<sup>280</sup> Former athletes are often in a position to express views but may choose to walk away rather than to do so. There are many reasons why current athletes will not speak up or say what they really think, including the fear of jeopardising their prospects of being selected or funded.

Individual athletes in HPSNZ targeted sports currently have no body to effectively represent the Elite Athletes or provide them with independent support. In terms of rights, contractors or volunteers may have a right to collectively bargain but that right is ineffectual if only employees have a legal right to compel an employer to collectively bargain.

Should HPSNZ targeted sports go through a collective bargaining process on the basis that it is an efficient way of agreeing the terms and conditions of Elite Athletes’ engagement? Or is it sufficient for HPSNZ targeted sports that are not team sports to determine these terms and conditions following an appropriate level of consultation directly with the Elite Athletes concerned (or via an Athletes’ Commission)?

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<sup>278</sup> Rowing, for example, has set up a 12 person (6 male and 6 female) Athlete Representative Group voted by all 54 members of the centralised squad based in Cambridge to consult directly on issues relating to rowers.

<sup>279</sup> In a media interview on 14 August 2018 about athletes providing feedback on the IOC’s Athletes Charter, Sarah Walker is reported as saying: “Active athletes, we hate that kind of stuff. It’s really hard to motivate us to do it. You’re so worried about yourself – what you need to do and what you want to achieve... so why would you spend 10-15 minutes doing a survey?”

<sup>280</sup> One interviewee said that representing divergent groups of athletes can be an impossible task and it takes a brave and confident person to speak up when not all athletes they represent may agree on the issue.

These questions need to be answered on a sport by sport basis. What is clear, in my view, is that Elite Athletes need to be involved either directly or through a genuinely representative body fully willing to advocate on their behalf in this process.

A formal negotiation process would be harder to achieve without an athlete representative body which can discuss and agree issues on behalf of all its members.<sup>281</sup> There are at least three conditions to have an effective athlete representative body:

1. The body needs to be owned, driven and wanted by the athletes themselves. It cannot be imposed on them.
2. The body needs resources, so it can operate on an independent and stand-alone basis.
3. The body needs a mandate from Elite Athletes to perform its role. The views of the representative body must be the views of the athletes they represent.

NSOs are working hard to address the competing needs and demands of their sport. For the smaller NSOs in particular this can be a difficult task. While support mechanisms do exist to help them in their role, NSOs would benefit from a more integrated, collaborative and information sharing approach. For example, New Zealand Rugby, as the largest Sporting Organisation, has a wealth of policies and other resources that it is more than willing to share and discuss with other NSOs, yet I am told that it is rarely asked to do so.<sup>282</sup>

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<sup>281</sup> While collective agreements in team sports need to be ratified by 75% of a Players Association's members in the same way as the Board of an NSO would need to approve any final agreement, in practice the Players Associations know, understand and represent the players' views throughout the negotiation such that final ratification is usually a formality.

<sup>282</sup> Rugby now has protocols and policies in place covering the following key integrity and player welfare issues:

- Mental Health and Wellness (including accessing confidential mental health support)
- Respect and Inclusiveness
- Agents via a charter
- Concussion
- Supplements
- Anti-doping
- Illicit Drugs
- Wagering and corruption
- Social Media
- Player Conduct and Team Functions.

# APPENDIX 5: NZ OLYMPIC COMMITTEE AND PARALYMPICS NZ

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## **New Zealand Olympic Committee**

Elite Athletes are in an NZOC environment for a comparatively short period of time (18 days every 4 years for Olympic Games and 14 days for Commonwealth Games). NZOC's role is to provide the best possible environment for the Elite Athletes to perform.

It is an IOC requirement for a national Olympic Committee to have an athlete representative body and recommends an Athletes' Commission as best practice. NZOC has three Commissions (Education, Athletes, Olympians) and two Committees (Health & Safety and Integrity).

The Olympians Commission is responsible for meeting the needs of retired athletes and ensuring they remain connected to the Olympic Movement. The Athletes' Commission is a consultative body responsible for rights and issues affecting current athletes. Its stated purpose is to champion the voice of the athlete within the New Zealand Olympic and Commonwealth Movements.

An Athletes' Commission representative sits on the NZOC Board and an athlete sits on each Commission and the Integrity Committee.

The Athletes' Commission consists of up to 10 people who have represented New Zealand at the last two Olympic or Commonwealth games.<sup>283</sup> Each athlete is elected for a 4 year term of office. All New Zealand athletes from the past two games for which the election is held get to vote through an online survey. The critics would argue that, while using the skills of former athletes is laudable, the reality is that by limiting the Athletes' Commission in this way, the pool to select from is small and this severely limits the chances of securing strong, experienced advocates who understand not only their own sport but what is happening in the sporting community more widely.

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<sup>283</sup> Two athletes are elected after Winter Olympic Games, three after Summer Olympic Games and two after Commonwealth Games by the athletes who attended those games. In addition, NZOC can co-opt up to three members, for example, where a type of sport is not represented or certain skills on the Athletes' Commission are needed.

For efficiency reasons, the Athletes' Commission is assisted by NZOC with the administration and organisation of meetings. I was told that the Athletes' Commission is more effective than previously when it sat as a completely external body.<sup>284</sup> The Athletes' Commission or any member can still raise any issues it wishes to.<sup>285</sup>

The process for the Athletes' Commission Convener's approval to the NZOC Board is set out in the NZOC Constitution. While the Athletes' Commission Convener is ultimately voted in by the athletes, the vote only takes place if the nomination is supported by the NZOC Board Appointments Panel. That immediately creates an issue as to the true independence of that appointment.

The effectiveness of the Athletes' Commission Convener on the NZOC Board depends on the person's skillset and experience. There is, however, the opportunity for the representative to directly contribute on athlete related matters.<sup>286</sup> Athletes' Commission representatives are required at all times to act in good faith and in the best interest of the NZOC and the Athletes' Commission strategy.<sup>287</sup> Their role is not to represent Olympic athletes in the same way as, for example, a Players Association does given their overriding obligation and loyalty is to the Olympic Movement as a whole.

Overall there were mixed views on the effectiveness of the NZOC Athletes' Commission. On the one hand, some questioned its independence, mandate and ability to represent all Olympic athletes. On the other hand, it does provide a direct channel to the NZOC Board table for athletes to be represented and heard.

In terms of NZOC's engagement with athletes, experience is that traditional methods such as emails are not working and so it is currently exploring new methods of engagement such as Facebook.

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<sup>284</sup> I was told that the Athletes' Commission will have more impact on key issues and organisation if aligned on strategy.

<sup>285</sup> One representative described his experience on the Athletes' Commission as having been really good: *"The NZOC Athletes' Commission works well; it is well integrated into and respected by the NZOC. The NZOC is a well-run and athlete focused organisation so it makes the work of the Athletes' Commission a whole lot easier."*

<sup>286</sup> I was told that Athlete representatives at the Board table can have a big influence, not just in the formal meetings but in all the informal interactions that go with being on a Board as well. Their presence is a reminder of the need to listen to the athlete perspectives and take their views into account.

<sup>287</sup> The Board can terminate an Athletes' Commission representative if the representative is not acting, or has not acted, in the best interests of the NZOC, whether as a member of the Athletes' Commission or otherwise.

## Paralympics New Zealand

Sport has been a platform for acceptance of athletes with a disability and for inclusion. The Rio and Sochi Paralympic Games have also taken the Paralympics to a new level in terms of the performance and professionalism of the athletes involved. The Paralympic Games are viewed by the International Paralympic Committee (IPC) as the world's number one sporting event for transforming society's attitudes towards impairment.<sup>288</sup>

The New Zealand Paralympic team consists of 25 to 40 athletes, most of whom are individual competitors, largely from swimming, cycling and athletics. Athletics have a fully integrated Paralympian programme and supply the relevant coaches, support personnel and competition needs for their Elite Athletes. Swimming by contrast is fully under the auspices of Paralympics New Zealand (PNZ). Cycling is in between with close collaboration between PNZ and Cycling NZ in terms of the development and training needs of their athletes.

I was told that, to date, the focus of PNZ and the para sports bodies has been on the athletes' immediate physical training and competition needs as opposed to the athletes' wider welfare needs, for example, career development or other off-field wellbeing needs.<sup>289</sup> Welfare issues can be more far reaching for para athletes.<sup>290</sup> Many Paralympians have to constantly deal with the effects of their disabilities.<sup>291</sup>

Since the London Paralympics in 2012 Paralympic athletes have received PEGs and Prime Minister's Scholarships in the same way but not at the same level as able bodied athletes. PNZ receives the PEGs funding untagged and in bulk, which allows greater flexibility in terms of how it can be distributed.

There is currently no para athlete council or athlete representative body in New Zealand.<sup>292</sup>

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<sup>288</sup> The IPC was formed in 1989 and its vision is "to make for a more inclusive society for people with an impairment through para-sport". The Athletes' Council is the collective voice of Paralympic athletes within the IPC and the greater Paralympic Movement. The Athletes' Council is selected by the athletes at the Paralympic Games (Summer and Winter) according to criteria which include the requirement to be a current or past Paralympian (within the last 8 years). The Chair of the Athletes' Council sits on the IPC Board.

<sup>289</sup> PNZ has a sports psychologist, Athlete Life Advisor and medical director. These roles are to develop trust and relationships with para athletes and focus on welfare needs. Feedback is provided to the PNZ High Performance Director on system based issues, not personal issues relating to an individual athlete.

<sup>290</sup> For example, PNZ relocated two swimmers to Auckland so they could access good coaching and pool space. When making that decision, the welfare of the athletes was not considered as much as performance goals. If PNZ had considered the athletes' welfare, it would have come to a different decision: for example, one athlete is blind and the move changed that athlete's whole environment: no friends, no support network, had to learn new routes etc.

<sup>291</sup> Which can include surgery and other complications arising from their disability.

<sup>292</sup> I was told that PNZ tries to maintain a good relationship with PNZ's Elite Athletes but that comes down to individuals rather than a systemic or structural decision to engage or hear the views of athletes. I was told that there was a need for a para athlete representative or liaison who para athletes could turn to for advice and support. At the international level, the Athletes' Council is the collective voice of Paralympic athletes within the IPC and the greater Paralympic Movement. The Athletes' Council is selected by the athletes at the Paralympic Games (Summer and Winter) according to criteria which include the requirement to be a current or past Paralympian (within the last 8 years).

## APPENDIX 6: TEAM SPORTS

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Team sports engage with their Elite Athletes in a variety of ways including through inductions for new professional players, leadership groups, surveys, end of campaign or end of year reviews and informally in and around the team environment. The underlying philosophy is that a strong relationship with professional players and their representatives is a source of competitive advantage.

Rugby and cricket had a real fear of being questioned and challenged 20 years ago. Both organisations had high profile disputes during which attempts were made to try to marginalise the Players Association and appeal to the leading players directly. Both organisations now respect the Player Associations as their representative body of the players. There is recognition that the Players Association comes from the right place and wants what is best for their sport as a whole. Hockey, netball and football are more constrained by resources but have agreements in place and a working relationship with their respective Players Associations.<sup>293</sup>

In terms of the formal interaction, the premise of the team sport collective bargaining model is that there is a need for a collective voice for athletes off the field and collective bargaining is a practical and effective method by which the sport can ensure it is hearing and responding to the views of its athletes.<sup>294</sup> Players Associations perform this role in team sports in New Zealand.<sup>295</sup>

Players Associations are incorporated societies whose Chief Executives and other employees are paid a wage.<sup>296</sup> They report to a Board made up of current players and independent directors.<sup>297</sup>

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<sup>293</sup> As with cricket and rugby, each of these NSOs has had to work through different issues and challenges with their respective Players Association, which affects the nature of the relationship at any one point in time. Some of these team sports are still working to develop a strong and cohesive relationship with the Players Association.

<sup>294</sup> I was told that ensuring the athletes have a credible voice around the table allows them to take more responsibility for the environment, processes and outcomes. *“It stands to empower them and breed a greater sense of respect for the issues and opportunities (for themselves and the environment). This helps with a strong culture that grows and embraces confident people, is aligned and focused, allows people to challenge each other etc. This all contributes to environments that can sustain performances over time. Seeing the athletes as key partners/stakeholders is the mindset.”*

<sup>295</sup> For example, the focus of the New Zealand Rugby Players’ Association (NZRPA) is on:

- ensuring player welfare and contributing to the ongoing development of the game;
- helping players take advantage of commercial opportunities;
- helping players understand and deal with life as professional sportspeople; and
- ensuring players have an organised and credible voice at the decision making table.

<sup>296</sup> For example, the NZRPA has been New Zealand’s men’s professional rugby players’ independent representative body since 1999. It has represented female professional players since it was known sevens would form part of the Olympics. It also has a registered trade union (the Rugby Players Collective) under the Employment Relations Act and in 2001 agreed the first collective bargaining agreement (CBA) with the New Zealand Rugby Union.

<sup>297</sup> The Chairs of the Rugby and Cricket Players Associations respectively are David Kirk and Ross Verry.

In addition, an Athletes Federation has been formed as an umbrella organisation to represent all the Players Associations on common issues and to represent individual sports people on a case by case basis.<sup>298</sup>

The fundamental rationale for a Players Association is that players need informed, independent advice from someone they trust and who has empathy for, and an understanding of, the player's position. Players Associations believe they are the only independent organisations in the New Zealand sporting environment to play this role because are not politically, financially or otherwise influenced or beholden to an NSO.

While other persons can speak up for a player (for example, a family member or an agent), a Players Association can address issues of principle and matters affecting all players without any one player having to stick his head above the parapet. I was told that Players Associations do not want or expect anything from a player. Players Associations maintain that they exist to help and serve the players' best interests.<sup>299</sup>

### **Collective Bargaining**

For team sports, collective bargaining is a way of achieving balance given the system needs to work for everyone from a top international to a player contracted on a short term agreement. As one interviewee put it, "*in a collective agreement arrangement everyone compromises a bit to get the best overall outcome for the game as a whole*".

A key principle underpinning collective bargaining agreements in rugby and cricket<sup>300</sup> is that players receive payments or other benefits, or an agreed share of commercial revenue generated by the professional game.<sup>301</sup> The agreements list the types of revenue included or excluded for this purpose.

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<sup>298</sup> The New Zealand Athletes Federation has one .5 FTE employee and is currently looking to grow its commercial programme.

<sup>299</sup> A number of different interviewees believed that the Players Associations are looking to expand their business into new sports for their own commercial return. The Players Association personnel I spoke to rejected that assertion. As one put it, "*if we do what we do for a commercial return then we are not very good businessmen*".

<sup>300</sup> The collective bargaining agreement, renegotiated every 3 years (sometimes shorter), is the vehicle for agreeing the terms and conditions of employment for New Zealand's professional rugby players (men and women). New Zealand Cricket has just agreed a 4 year Master Agreement for its professional men's cricketers (who are independent contractors) and is about to enter negotiations to renew the MOU for its women's cricketers. Netball agrees the type and quantum of payments to players at the Silver Ferns and ANZ Premiership level. Hockey and football sets out player payments and other benefits for their men's and women's national team players. The NZRL is currently negotiating its first collective bargaining agreement for Kiwi players (Warriors and other New Zealand players in the NRL are covered by the NRL collective bargaining agreement).

<sup>301</sup> For example, professional cricket players will receive 26.5% of revenue generated from professional cricket, which over the 4 year term of the agreement is forecast to be \$65.3 million.

Once the size of the pie is agreed, representatives of the NSO and the Players Association agree how it will be spent, for example, player benefits,<sup>302</sup> training and competition environments, insurance,<sup>303</sup> player education and player welfare initiatives<sup>304</sup> and the funding of the Players Association.<sup>305</sup> In essence the parties need to agree how to address any issues impacting on professional players. This can be done as part of the agreement documenting the negotiation or by setting up ongoing processes,<sup>306</sup> policies<sup>307</sup> or forums<sup>308</sup> to address issues as they arise.

## **Player Contracting Models**

Player contracting models in team sports are important for the purposes of this review because the key focus in their evolution has been on providing Elite Athletes with as much certainty as possible. This is in contrast to the PEGs funding model.

In the late 1990s and early 2000s New Zealand Rugby, for example, had a selection based payment system whereby players only got paid their agreed level of retainer if they were selected in a Super Rugby squad each year. This worked well for New Zealand rugby because it could secure players by locking them into a contract but avoid having to pay them if they did not perform well enough to get selected for a Super Rugby team. Selection at this level for All Blacks was a given but for the majority this selection based payment system caused angst and uncertainty.

All professional rugby players now receive their agreed level of retainer whether they are selected or not. They have certainty of income for the term of their agreement. The rationale is that there is enough uncertainty, anxiety and pressure on leading players and their families without having to worry about paying the bills during the term of the contracts as well.

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<sup>302</sup> For example, as well as setting out the contracting process, criteria, time line, retainer levels and match fees, cricket's agreement also provides for \$2.85 million over 4 years to be invested into a retirement fund aimed at ensuring players are providing for their future.

<sup>303</sup> For example, NZ Rugby provides medical (including pre-existing injury) cover, and life and trauma cover for approximately 500 players contracted at Provincial Union level and above. Insurance cover has been in place since the first collective agreement was signed in 2001.

<sup>304</sup> For example, cricket's agreement provides for increased funding for professional development programmes to cover a player's career (18 to 35 for a cricketer) and their post career. A professional cricketer can access a player hardship fund and the new agreement establishes a health and wellbeing initiative for past players.

<sup>305</sup> In rugby and cricket this comes out of the players' share of revenue (the player payment pool). Netball NZ provides a fixed amount of funding to the Netball Players Association while the New Zealand Football Players Association is funded by FIFPro, the international player body, and does not receive any funding from New Zealand Football.

<sup>306</sup> For example, NZ Cricket had two current players on the most recent BLACKCAPS coach appointment panel.

<sup>307</sup> For example, NZ Rugby has Anti-Corruption and Betting Regulations, Illicit Drugs Regulations, Medications Guidelines and Supplements Regulations.

<sup>308</sup> For example, through collective bargaining a Health and Safety Committee has been set up to advise on all matters relating to the health and safety of players and teams. The Health and Safety Committee shall comprise a minimum of one representative appointed by each of NZ Cricket, the Major Associations and the Cricket Players Association, and one medical practitioner.

Under this model, New Zealand Rugby needs to be more careful as to who it offers contracts to and for how long but no one in rugby is wanting or suggesting a return to the selection based model. In simple terms, if a player's motivation suffers or performances drop as a result of certainty of income then the question being asked will be whether or not that player belongs in the professional environment.

Cricket has a model where all professional players in New Zealand are only contracted for a year at a time with their remuneration level depending on their performance ranking. While on the face of it that creates no long term certainty, the reality is that 95% of professional cricketers know they will be contracted the following year even though their ranking (and therefore their remuneration level) may change. It is only the bottom 5% of players who therefore face the short term worry about whether or not they will be contracted the following year (and therefore whether they will have an income) and, unless they are young up and comers, these are the very players who should be questioning whether or not they have a viable professional career in cricket.

Having a Players Association does not mean that Players Association personnel are directly involved in all operational matters. For example, in rugby, coaches and team personnel run and manage their teams on a daily basis without interference from the Players Association and high performance personnel lead the reviews of all national representative teams using surveys, focus groups and review meetings.

Traditional methods are being challenged. For example, a key moment for the All Blacks was when in 2004, for the first time ever, a core group of players was told they would be selected in the next All Blacks squad. Those players were then charged with turning around the team's performance, but I was told that all their individual performances lifted as a result. I was told that a greater degree of security of selection for leading players in the short term is one of the factors that has contributed to the All Blacks' recent sustained levels of performance and success.<sup>309</sup>

### **Players Association's Role**

Having a formal agreement and forums for players to be heard does not prevent problems from arising but does provide different layers for resolution when they do. For example, I was told of examples of coaches reverting to unacceptable behaviours when under pressure and being told by players to back off. In some cases, further interventions are required to manage trust and confidence issues and the Players Association will usually become directly involved at this point.<sup>310</sup>

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<sup>309</sup> In terms of the concept of psychological safety, these players were provided with status, security, belonging and purpose. Rather than worrying about themselves they were freed up to focus on the team as a whole.

<sup>310</sup> While their preferred approach is not adversarial, a Players Association can and will, if necessary, stand up, question and challenge an NSO.

On the other hand there have been instances where issues directly affecting performance have arisen in a team sport environment which have either not been addressed or have not been addressed in a timely manner.<sup>311</sup> While these issues can be complex, ultimately the reality is that having a Players Association involved has not led to a resolution of these types of issues in a satisfactory manner in all cases.

Put simply, the Players Association is definitely not a panacea for all athlete issues but their involvement has undoubtedly led to improvement in the treatment and welfare of athletes.

There is a perception that Players Associations are soft on athletes. That is not the view of many I interviewed. On the contrary, I was told that Players Associations will often have the hard conversations with athletes that some Sporting Organisations are reluctant to have<sup>312</sup> or which can only be had by an independent person.<sup>313</sup> Players Associations also see their role as removing excuses for a player's non-performance.<sup>314</sup>

One former athlete said she did not realise what a Players Association did until after she retired as a player. A Players Association takes away a lot of distractions that players do not have to worry about, for example, match schedules, leave dates, a say in who the coach is. Players are left to perform.

I was told that a professional cricket player, for example, cannot realistically complain about matters such as the shape of the competition structure, the gap between matches, the number of allowances, the appointment of their coach, or not having appropriate training facilities.<sup>315</sup>

In addition, no cricketer in a professional environment has a reason not to get the help or support they need in terms of personal development, health or welfare issues.

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<sup>311</sup> Rugby, cricket, netball, hockey and football in New Zealand have all had issues in their Elite Athlete environments.

<sup>312</sup> I was told of examples where a coach or a club might write a player off due to his behaviour and simply not select him. The Players Association will then sit down with that player, get past the emotion and identify what the player needs to do to change his coach's perception of him or her.

<sup>313</sup> I was told that if a player is dropped or not offered a new contract, the risk is they become disaffected. The Players Association provides somewhere for the player to go to find out if they have genuinely been mistreated or if a proper process has been followed. That is seen as a positive from the NSO's perspective.

<sup>314</sup> On one view, good employment conditions or terms of engagement are really about eliminating excuses for poor performance: *"It is not about making the boat go faster but about eliminating reasons for the boat going slower."*

<sup>315</sup> The Cricket Players Association has taken all those excuses away through the negotiation of a collective agreement (or MOU for the women) with New Zealand Cricket which addresses all these and other issues.

Some of the issues can be complex, for example:

- rugby in recent years has grappled, and continues to grapple, with the issues involved in the All Blacks playing additional test matches. While there is significant financial and brand upside in doing so, additional tests have player welfare consequences in terms of increasing the number of matches leading players have to play. In resolving competing issues of this nature New Zealand Rugby has benefited from the views of the Players Association<sup>316</sup> and a mature senior player leadership; and
- in football, the issue of business class travel is a key issue. For players, long distances and short turn arounds make it essential for Elite Athletes to be able to lie flat en route so they can sleep better, which is the most important way of reducing travel fatigue. New Zealand Football's concern is the impact of the cost of business class travel on its ability to run a meaningful international programme. A working compromise solution has been found through collective bargaining.<sup>317</sup>

Ultimately team sports can benefit, and have benefited, from well-run Players Associations who represent their players' views in light of the needs of the sport as a whole. The reality is that an NSO and a Players Association are two equal parties who need each other and who each represent genuine interests vital to the success of the game. The effectiveness of both organisations depends on the quality of the people leading them: there is no room on either side for ego or personal agendas.

Clearly rugby and cricket (and to a lesser extent netball and football) have resources derived from commercial revenue that other sports don't have. Within these codes and in other team sports, however, there are players who are not fully professional. The focus for these players is how to balance their sporting needs with their life outside of sport. By way of example:

### *Hockey*

Previously top hockey players trained and competed while having jobs or other means of independent support. HPSNZ then funded a coach and other full time management personnel, who in turn needed greater access to players to compete on the world stage. Leading players were strongly encouraged to relocate to Auckland or in some cases, I was told, were travelling at their own cost from Rotorua, Hamilton or Whangarei up to three times a week.

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<sup>316</sup> NZRPA was described as “understanding the bigger picture”, “having a close relationship with players” and being “genuine about player welfare”.

<sup>317</sup> Travel arrangements are determined on a case by case basis with the NZFPA directly funding the cost of business class travel in some cases. Although a solution has been found, the issue continues to cause angst for the NSO and the NZFPA and its members.

Players were only receiving a PEG, which did not cover their basic living costs.<sup>318</sup> Players were playing 40 to 50 tests a year and were away 130 days a year. When home, training times were fixed and required many players to travel across Auckland in peak hours.<sup>319</sup> There was insufficient ability for athletes to sustain a proper job, be self-sufficient or have an opportunity to meaningfully pursue other aspects or interests in their life. While there were other benefits of being an HPSNZ carded athlete,<sup>320</sup> the position was not tenable and created significant hardship for some of the athletes concerned.

The Hockey Players Association strongly advocated for a more balanced arrangement and there was a lot of tension with Hockey New Zealand, who feared performance would be compromised. However, over time, Hockey New Zealand recognised the difficulties players in these circumstances faced and looked to develop a compromise. A new Collective Agreement has sought to provide more support and more flexibility to mitigate the effects arising from the time players are required to be assembled for training or competition purposes.<sup>321</sup> Hockey New Zealand and the Hockey Players Association agree that progress has been made in terms of how the player welfare issues have been addressed but, resource permitting, both organisations recognise that there is more that needs to be done.

### *Rugby*

A leading BLACK FERNS player will receive an annual retainer based on a commitment to assemble 50 days a year and to train for 10 to 14 hours each non-assembly week.

The arrangement tries to provide players with as much certainty as possible while providing for opportunities to work, study or have interests outside of their sport.

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<sup>318</sup> The PEGs grant was \$25,000 for a squad of 18 players, which was paid across a squad of 25 players, 50% in retainer and 50% depending on tour selection. This equated to \$18,000 if a player played in every tournament. By way of contrast, a new police constable's base annual salary is \$56,000 and the Police Association is concerned this is insufficient for young Auckland police to make ends meet. Police are reportedly bringing in 89 cent tins of baked beans for dinner and having to travel 90 to 120 minutes per day to and from work given the cost of food and housing respectively (*NZ Herald*, 7 September 2018).

<sup>319</sup> Training times and venues were influenced by limited turf availability, but I was told of times when players might have gotten home at 11pm, eat, sleep at then be up at 5.30am to get to gym session on the North Shore before work.

<sup>320</sup> As one interviewee told me, "*these benefits do not pay the bills*".

<sup>321</sup> Black Sticks women's players are required to be assembled for approximately 260 days a year. The retainers and assembly fees are not sufficient to live independently on so the environment has to be one that allows them 25 to 35 hours a week to work/study. The agreed training schedule is 4 days of up to 3 hours per day at either end of the day depending on access to turf and one 3 hour training session in the weekend. NZ Hockey is looking to contract players on short term marketing contracts or other part time positions to try to set the example in terms of showing flexibility as an employer.

## *Netball*

Netball is New Zealand's number one female participation sport. It has a passionate base and a well-established nationwide club, school and zonal system. Players from a diverse range of cultural backgrounds play netball.<sup>322</sup>

Netball's diversity is a strength of the sport but also a challenge in terms of how to unite and get the best out of players in a challenging economic environment and an elite league that is semi-professional. Netball wants and needs to have full time professional athletes in order to maximise performance but is currently unable to pay leading athletes to the level required where they can fully dedicate themselves to their sport. Compromises are therefore essential.<sup>323</sup>

## *Football*

Football has a collective bargaining agreement for both its men's and women's Elite Athletes which reflects the reality that these players spend most of their time in the club environment with the opportunity to play for the national team limited to short FIFA windows. Under the latest collective agreement, the Football Ferns are treated the same as the All Whites in terms of match fees, the same share of prize money, and medical, insurance and travel arrangements.

A key element of the Football collective bargaining agreement is the setting up of Te Mairehe, a committee consisting of six representatives nominated by NZ Football and the Professional Footballers' Association which has been designed to meet informally to discuss issues relevant to the All Whites and the Football Ferns in an open and confidential way.

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<sup>322</sup> Netballers come from all walks of life and a diverse range of cultural backgrounds. Netball is the most played secondary school sport in New Zealand, and is the number one sport for European and Māori girls, the number two sport for Pasifika girls and number three for Asian girls.

<sup>323</sup> The legacy of the now defunct Trans-Tasman Netball League is to have two separate agreements covering the ANZ Championship and Silver Ferns. The ongoing challenge is a lack of resources to enable leading netballers to fully commit to their sport. As a consequence, teams' ability to access players is restricted to allow players the opportunity to pursue study or work outside netball.

# APPENDIX 7: SPORT NZ AND HIGH PERFORMANCE SPORT NZ

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Funding is limited. Sporting Organisations, teams and Elite Athletes have to operate at a commercial disadvantage in comparison with many of their international competitors. This is the reality even for rugby as New Zealand's biggest and most commercial professional sport.

Accepting that funding reality, the challenge is to have a funding model which incentivises and rewards performance while also driving the right behaviour (or, at the least, not driving the wrong behaviour).

## **Sport New Zealand**

Sport NZ is the lead government agency for sport and recreation and its purpose is to “*promote, encourage, and support physical recreation and sport in New Zealand*”.<sup>324</sup> In terms of matters relevant to this review, Sport NZ's primary focus is NSO organisational capability<sup>325</sup> but Sport NZ does retain ultimate accountability for the oversight and delivery of HPSNZ's high performance programme.

Sport NZ employs six National Partnership Managers, whose role is to support key partners to deliver on Sport NZ investment outcomes. The National Partnership Manager works to a whole of sport approach; that is, kids fall in love with a sport, that sport retains those kids for the rest of their lives, identifies and develops talent, and the sport's high performance pathway produces world class athletes. The whole of sport approach is captured within a shared agreement between the NSO and Sport NZ, the partner plan.

National Partnership Managers also help assist the NSO with its strategic plan and systems support as well as its structure and pathways. Tools and resources are available for use and a business capability team provides consultancy services in the areas of governance, planning, technology, leadership, human resources and finance.

An NSO may receive funding for participation initiatives from Sport NZ that align with Sport NZ's strategic priorities as well as high performance outcomes from HPSNZ.

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<sup>324</sup> As set out in the Sport and Recreation New Zealand Act 2002.

<sup>325</sup> Sport NZ invests \$2 million per year on improving NSO and other partner capability.

For example, Netball NZ receives participation funding given netball is the number one female participation sport in New Zealand and also high performance funding for the Silver Ferns to win their pinnacle events (the Netball World Cup and Commonwealth Games).<sup>326</sup>

## High Performance Sport New Zealand

High Performance Sport New Zealand (HPSNZ) is a subsidiary of Sport NZ with a separate management team reporting to a separate Board.<sup>327</sup> HPSNZ has a vision based around winning medals<sup>328</sup> and wide ranging objectives set out in its constitution.<sup>329</sup> The majority of HPSNZ personnel work in Auckland and Cambridge supporting approximately 375 carded athletes and 263 non-carded athletes.<sup>330</sup>

HPSNZ is the main or a significant source of funding for many Sporting Organisations. I was told that HPSNZ's role is to support NSOs, not to do the job for them. HPSNZ does not want to usurp the NSO's role or autonomy but does want to build the quality of people and skills within the NSO's high performance environment. As its name suggests, HPSNZ is unashamedly focused on high performance with their main measure being on-field results particularly at an Olympic Games or World Championship.<sup>331</sup>

Prior to HPSNZ, high performance was delivered through North, Central and Southern academies of sport. These academies were not seen as being cohesive and so were dropped in favour a national, end to end high performance system involving coaches, athletes and other HP personnel.<sup>332</sup>

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<sup>326</sup> I was told that Netball NZ also receives support from Sport NZ to build their inhouse capability, for example, Chief Executive mentoring, assistance with the development of a digital platform, and assistance with strategic planning and the development of a funding strategy.

<sup>327</sup> The Chair of Sport NZ is also the Chair of HPSNZ and a number of directors sit on both organisations' Boards. HPSNZ has 121 FTE, of which, I was told, 90% are directly allocated to sports and/or are embedded within an NSO. It has specialist providers in Performance Health (Medicine and Performance Therapies), Performance Science (Nutrition, Psychology, Strength and Conditioning, Technique Analysis, Physiology) and the Athlete Life Programme.

<sup>328</sup> HPSNZ's vision is to "*inspire the nation through more New Zealanders winning on the world stage at Olympic and Paralympic Games and world championships in targeted sports*".

<sup>329</sup> HPSNZ's objectives include (but are not limited to):

- making New Zealand the most successful sporting nation in the world by developing high performance sport;
- ensuring that national sporting organisations are accountable for meeting agreed high performance outcomes;
- effecting a culture change in New Zealand high performance sport with an increased focus on excellence; and
- being the lead agency for New Zealand high performance sport including athletes and sports people and provide a holistic and multi-disciplinary educational approach for overall personal, career and athletic development of high performance sports people.

<sup>330</sup> The supported non-carded athletes are mostly in netball, rowing, rugby and hockey.

<sup>331</sup> HPSNZ's core purpose is to create world leading, sustainable high performance. The sustainability aspect is measured by an annual NSO survey and athlete and coach surveys as well as sports high performance programme goals and the performance of development athletes in targeted sports.

<sup>332</sup> The Central academy was abolished in 2007 and the North and South academies continued until 2011, when they were merged into HPSNZ.

The creation of HPSNZ was designed to ring fence central government funding and place it in the hands of a nimble, stand-alone body solely focused on athletes winning on the world stage.

HPSNZ and Sport NZ are trying to get more aligned around the organisational and high performance support they provide NSOs.<sup>333</sup>

## **HPSNZ Funding**

HPSNZ's Elite Athlete funding and support structures have remained largely unchanged since 2004. The HPSNZ funding system was designed to allow Elite Athletes to train and compete at minimal personal cost. Prime Minister's Scholarships and PEGs were introduced in 2000 and 2004 (respectively), athlete support services are provided by HPSNZ and bulk funding is provided to NSOs to assist with funding campaigns.<sup>334</sup>

A PEG is a funding agreement only. The level of funding is different for individual Elite Athletes and Elite Athletes from team sports.<sup>335</sup> HPSNZ distributes approximately \$7 million per annum in PEGs to carded athletes. Elite Athletes' only obligation is to meet defined performance targets in that 12 month period.<sup>336</sup> For many Elite Athletes it essentially comes down to performing at one race or contest at the pinnacle event of that year or risk losing funding.<sup>337</sup> I was told that when PEGs were introduced HPSNZ deliberately adopted a hard-nosed, performance based approach to the funding of Elite Athletes.<sup>338</sup>

HPSNZ also targets coaches led by a seven person high performance coaching team who work one on one to assist coaches to grow their capability. HPSNZ has 95 carded coaches, of whom 65 are full time in HPSNZ targeted sports (up from 38 in 2012).<sup>339</sup>

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<sup>333</sup> An NSO High Performance Steering Group has been set up to assist with this process.

<sup>334</sup> In 2016 an additional \$20 million was committed to support training and competition infrastructure for canoe, cycling, rowing, sailing, snow sports and swimming.

<sup>335</sup> Funding for individuals ranges from \$60,000 per annum for an Olympic gold medallist to \$30,000 for a 9th to 12th placing. Team sports range from \$35,000 for Olympic team gold medallists to \$25,000 for a 4th to 8th placing.

<sup>336</sup> The competition is agreed in advance with HPSNZ and the NSO and is the highest standard of world competition in that sport in that calendar year, that is, World Championships, Olympic Games or another pinnacle event. Multi-year PEGs (up to 4 years in duration) can be provided to athletes "with a history of medal-winning success on the world stage and who are focused and capable of a medal-winning performance at the Olympic Games".

<sup>337</sup> HPSNZ has a discretion to continue to pay PEGs even if performance targets are not met because of, for example, illness or the like. I was told that discretionary PEGs are getting harder and harder to receive given the increasing number of Elite Athletes competing for funding from a fixed pool. HPSNZ did not disclose the amount of their discretionary budget beyond informing me that budgets were tight and "93 cents in every dollar they receive is allocated to sports".

<sup>338</sup> For example, HPSNZ considered the Canadian system where athletes given guaranteed funding for a 3 year term was seen in 2004 as not aiding performance because some athletes could take the lifestyle option and not put in the effort required to win.

<sup>339</sup> Since 2009, 72 coaches have graduated or are currently enrolled in the Coach Accelerator Programme, and 57 have graduated from the Coach Campaign Leadership Programme since it was introduced in 2013.

HPSNZ distributes \$4.25 million per annum in Prime Minister's Scholarships to carded athletes (\$2 million per year), coaches, officials and support staff. The Scholarships provide real flexibility for athletes to study as well as a valuable tool for coaches to obtain professional development.

HPSNZ's investment criteria is based on past performance, future potential, quality of the high performance programme and the individual context of the sport.<sup>340</sup> HPSNZ has a targeted funding approach whereby 11 targeted sports receive 75% of funding. Review meetings<sup>341</sup> are held to discuss the issues and challenges these sports face, with the intention that solutions can be developed in partnership.<sup>342</sup>

HPSNZ spends approximately \$36 million per annum in NSO High Performance programmes and a further \$10 million per annum in support services support for carded athletes. Some of the popular participation sports question this targeted investment model, which they believe does not reflect the sports New Zealanders want to watch, follow and play.<sup>343</sup> Other sports believe this focus does not take sufficient account of the changing demographics of New Zealand society and that it is fundamentally unfair that HPSNZ does not invest any funding into their development.<sup>344</sup> For these sports no funding means no ability to run a meaningful high performance programme in their sport, which severely restricts their ability to attract, retain and develop their Elite Athletes.

HPSNZ's philosophy is to incentivise performance and decide on an annual basis whether or not to continue to fund a particular Elite Athlete.

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<sup>340</sup> Individual sport context refers to:

- the level of maturity and sophistication of the HP Programme;
- the number of carded athletes;
- its previous HPSNZ investment history and performance against it;
- its total HPSNZ investment and resource allocation, including resources allocated other than core investment;
- the other sources of revenue it has or can source;
- the budgeted campaign costs; and
- the nature of the sport including the qualification process, the number of events and disciplines and format of competition programme, and the field of competition.

<sup>341</sup> Each sport has a 3 hour annual review and a recently introduced midyear performance conversation which focus on:

- whether the sport has met its investment KPIs; and
- the challenges and opportunities in terms of success at the NSO's pinnacle event for that year, that is, Olympics, Paralympic, World Championship.

<sup>342</sup> Review meetings are attended by the HPSNZ CEO, Investment GM performance consultant and National Partnership Manager, the NSO CEO, HP manager and (sometimes) a head coach.

<sup>343</sup> The Australian government commissioned the Crawford Report in 2015 in response to the AOC's request for additional funding. The main finding of the Crawford Report was that Olympic gold medals didn't increase participation, and that funding would be better spent on 'popular' sports such as AFL, league, football, cricket, netball and rugby, and on increasing participation at community or grassroots level. The report found that the bias towards funding Olympic sports leads to outcomes that make little strategic sense for Australia: "*For example, more government funds are provided for archery than cricket, which has more than 100 times the number of participants.*"

<sup>344</sup> One interviewee described their sport as not being 'part of the cool kids' club' and that under the current model a sport will get funding if a 'rich white kid is riding something expensive', while sports that appeal to other demographics do not get the same opportunities whatever the global appeal of the sport.

I was told that HPSNZ needs real clarity and transparency of vision and purpose. If it's just about medals, then logically it should focus on individual sports, where single athletes can win multiple medals (for example, weight lifting and swimming). If it is about sports that resonate with New Zealanders or New Zealanders are passionate about, then that criterion will lead to funding of different sports.

Everyone I spoke to accepted the need for performance outcomes.<sup>345</sup> The concern with the current funding model is that it drives Sporting Organisations to focus on short term results at the expense of developing players or creating a sustainable high performance system within each sport.<sup>346</sup> I was told that NSOs want to implement an 8 to 10 year high performance plan<sup>347</sup> but need certainty of funding to do so and that HPSNZ's current approach compromises an NSO's ability to deliver a long term, sustainable programme.<sup>348</sup>

A sport performs (often without the support of HPSNZ) and if they meet the standard required, HPSNZ will start funding them. If the sport subsequently does not maintain that standard, the funding is withdrawn. For both the sport and the athletes concerned, the consequences can be severe.<sup>349</sup>

There is a collective desire for the high performance system in New Zealand to provide Elite Athletes with the best possible opportunity to perform to their potential, but not at the expense of their welfare and wellbeing. To achieve this balance, the system would benefit, in my view, from greater transparency about the weighting and application of the funding criteria, greater certainty of funding for NSOs and Elite Athletes wherever possible and a broader and longer term view of performance success.

HPSNZ will be reviewing its funding model as part of its 2030 Blueprint. Matters for HPSNZ to consider further include whether:

- 1) investment should be tagged to a sport delivering on criteria and outcomes linked to its treatment to all participants (not just athletes); and

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<sup>345</sup> A common reaction was “of course high performance sport should be about winning, but it can never be the only objective”.

<sup>346</sup> For example: “HPSNZ's uppermost priority is performance: we don't get asked to present on how happy or well adjusted our athletes are.” NSOs are also incentivised to make the future look bright. As one interviewee put it, “the current HPSNZ funding model encourages sports to paint a positive picture in an attempt to secure more or retain funding”. One para Elite Athlete referred to ‘soft medals’ – sports which are funded because it is perceived to be easier to win a medal in that sport's classifications.

<sup>347</sup> For example, I was informed that each Elite Athlete in snow sports has their own individual 8 year, 4 year and annual plan that is driven by them and their tight team.

<sup>348</sup> While there was an acceptance of performance based funding, not all revenue should be at risk; for example, I was told Sailing Australia receives \$9.1 million a year, with 80% of that guaranteed and 20% performance based.

<sup>349</sup> An example given to me was where HPSNZ wants medal outcomes from an NSO. The NSO says it needs more resources and expertise to achieve those outcomes. HPSNZ's response is that its performance does not warrant more resources but it needs to improve to get funding. The coach is then under pressure to improve performance so his or her only option is to train the athletes harder. This in turn leads to athlete welfare issues. When they arise, HPSNZ stands back and says, “Sport owns sport” and the NSO says, “We are just doing what it takes to achieve the performance outcomes set by HPSNZ”. No one takes responsibility for the consequences.

- 2) a more defined, express commitment to people in general and the Elite Athlete experience in particular should be a core aspiration and deliverable of the system; and
- 3) NSOs should be given longer term funding certainty, and whether, with that certainty, they will be better placed to achieve long term, sustained success.

### **HPSNZ Support Services**

As well as funding, HPSNZ provides Elite Athlete support services. By centrally contracting service providers, the intention is that HPSNZ can retain the best talent and distribute them amongst the sports according to need and the size of the sport; for example, rowing has full time embedded physio, bio mechanist, psychologist and strength and conditioning support personnel as part of its centralised programme.

I was told that centrally contracting HPSNZ's staff is designed to attract, manage and retain the best providers within a framework that ensures effective monitoring and quality assurance. A shared services model is cost effective by providing scale and also reduces the potential risk of performance being prioritised over health.<sup>350</sup>

HPSNZ asserts that *“this ‘one stop shop’ approach is seen as a competitive advantage by other international systems and is one of the reasons for New Zealand’s extraordinary results on the world stage”*.

I received many strong and differing views on HPSNZ's role as a service provider. Some interviewees were very complementary about the quality of the people and the service they have received, others not so.<sup>351</sup>

Feedback included that there are too many touch points with Elite Athletes and confusion about overlapping roles. I was told that team support personnel need to know, and have the trust of, Elite Athletes in order to do their jobs effectively, so it can be a challenge for one person to effectively look after multiple athletes spread across different environments.

I was also informed that the needs of the particular sport are discussed and agreed between the NSO and HPSNZ subject to overall resourcing constraints.<sup>352</sup>

I was told that some HPSNZ service providers would not stay working in sport if they had to work directly for an NSO<sup>353</sup> but I also heard the opposite view, namely, that some NSO service providers would not directly work with HPSNZ.

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<sup>350</sup> I was told that there is a potential for increased risk-taking behaviour, related to a performance outcome perspective, the more closely aligned practitioners are with sport outcomes and the further they are from their professional colleagues. The Team Sky experience, the ‘Bloodgate’ scandal, the British Athletics approach to supplementation revealed in the recent UK Government Select Committee hearings, and any of the doping cases involving doctors all provide examples of risk-taking behaviour of practitioners, facilitated by total immersion in sport where performance may be prioritised over health, even by those charged with health.

<sup>351</sup> I am conscious that there is a range of reasons and experiences which shape or colour any one person's views of a system.

<sup>352</sup> There are differing views but all parties agree that Athlete Life, sports psychology and other athlete welfare services cannot be effectively delivered if the provider is not able to spend the time he or she needs to know and understand the individual athlete.

On the one hand I was told that NSOs do have a say in the provider assigned to the Elite Athletes and that there is ‘joint management’ of that provider. On the other hand I heard there is no accountability for HPSNZ personnel operating within an NSO’s environment<sup>354</sup> and that it would be better for staff to be contracted by the NSO and fully engaged as part of the wider plan as opposed to reporting to a third party investor.

Other frustrations expressed with the current high performance model included that:

- multiple services are provided by different parties<sup>355</sup> and it is not always clear who is providing what service and where different services stop and start;
- there is no clear induction and training for Chief Executives, Boards or High Performance Managers and athletes on how the system works and what it delivers;<sup>356</sup>
- more commitment is required to develop people and processes within an NSO. NSOs are currently ‘fighting fires’ through tactical responses to try to fix particular problems or mitigate certain risks;
- it was hard to see the ‘value add’ provided by some of the high performance consultants at HPSNZ and they appeared to lack accountability for outcomes;
- the pressure of getting PEGs or not getting PEGs based on performance outcomes creates anxiety<sup>357</sup> and does not create a good environment or culture,<sup>358</sup> and

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<sup>353</sup> I was told that many NSOs do not have the capability to properly manage personnel.

<sup>354</sup> One interviewee was of the view that “*the HPSNZ structure allows excuses. It only provides short term funding. Sports are having to compromise what they think is right to fit into a plan HPSNZ wants to see or will approve and fund. There are HPSNZ people working in NSO environments but they have no accountability when things go wrong: all the heat is on the NSO, athletes and the coach for performance outcomes. HPSNZ staff mixed in the environment are determining what activities are undertaken to get funding but there is no job clarity or role definition. Who is in charge when things go wrong? This leads to a blame culture and excuses*”.

<sup>355</sup> For example, NZOC, HPSNZ, NSOs and private coaches.

<sup>356</sup> One CEO of an NSO told me that a CEO finds out how the sporting system works through the journey of being a CEO.

<sup>357</sup> One Elite Athlete told me that the timing of the World Championships was such that if she had not made the semi-final in her event then she would not have received any further payments in relation to her current PEGs grant. This was a negative because she wanted to be positive going into the race, not worrying about outcomes.

<sup>358</sup> Some were of the view that “*you can’t focus on performance if you’re worried about how to pay the rent*” and that the pressure from being cut by the system was a “*terrible way of going into a match*”. Others understood that there have to be objective binary performance criteria and embraced the pressure of performing in one race or contest a year to obtain or keep their PEGs. I heard on more than one occasion that the annual need to perform at one-off events to sustain a PEG was good preparation for an Olympic final, which also came down to one race or contest. One interviewee spoke of the need to retain her PEGs as being one of the considerations behind her decision to race while carrying an injury (she ended up making the injury worse and having to have surgery). Another interviewee said that a decision was made to enter more than one race at the World Championships partly so that some of the athletes could achieve a result which would retain their PEGs.

- some Elite Athletes have a concern around the independence of HPSNZ personnel.<sup>359</sup>

How providers are engaged is an issue that needs to be discussed further on a sport by sport basis taking account of alternative approaches in other countries.<sup>360</sup> For my part, I see the merits and cost savings of HPSNZ centrally contracting providers where NSOs only have a part time need for their services. However, I was not persuaded by the arguments in favour of a centralised programme where a service provider is full time with an NSO.

While I acknowledge the benefits in terms of quality control, it does not seem right to me that NSOs are deemed capable of contracting Elite Athletes and coaches but not other service providers. If there is further human resource or other support NSOs need to perform this role, then that support needs to be provided. If there is a risk of performance being prioritised over health, those risks should be addressed within the NSO environment rather than taking responsibility for some, but not all, providers away from that environment.

### **Athlete Life**

HPSNZ's Athlete Life programme is a centralised one on one professional and personal support scheme. HPSNZ provides Athlete Life Advisors to help and support Elite Athletes in HPSNZ targeted sports.

There are 15 Athlete Life Advisors employed by HPSNZ in a variety of full time and part time roles. The goal is for every carded athlete to have a life plan during their career and when they transition out of sport.<sup>361</sup>

Confidentiality is an important part of their role and they act independently of the coach or other team management personnel. Athlete Life Advisors have traditionally been viewed as focusing just on a carded athlete's work or study but, I was told, are now meeting regularly with the athletes in their care. Athlete Life Advisors are responsible for inducting athletes into the professional environment and transitioning them out of the environment (carded athletes are entitled to access the service for 6 months from the time their carding is revoked).

Some of the people I interviewed were very positive about the calibre of people and service provided by Athlete Life, while others did not value or in some cases even understand the nature of the service on offer.<sup>362</sup>

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<sup>359</sup> The concern was about not being confident to speak about anything other than performance because of the risk of it getting back to the coach or because the advice will be based on what is best for their sport not what is best for them.

<sup>360</sup> In Australia, for example, the Australian Institute of Sport is formulating a new strategy which aims to see the institution become less 'science and services dominant' and 'Canberra-centric', transitioning to an increased focus on athlete welfare and development, and partnering more with universities.

<sup>361</sup> I was told that HPSNZ offers Athlete Life not only because it is the right thing to do but also because if an athlete feels good, has a strong self-identity and a dual career then that is good for performance.

<sup>362</sup> For example, one interviewee said: "I believe I have HPSNZ's best Athlete Life advisor. She has been there and done that, understands sport. She helps with my study programme, helped on the commercial side and has become a good friend." Another interviewee's view was: "It became a tick the box exercise with no value; maybe if I was younger, I might have needed to chat

The feedback suggests that not all high performance environments recognise or support the importance of the service being provided.<sup>363</sup>

Some Elite Athletes have expressed concerns about the confidentiality and independence of Athlete Life. Others have professed to not really understanding what they do or why they should talk to them. Others have relied on sourcing the help they needed through their own contacts.

The Personal Development Programme is an alternative athlete development programme run by Personal Development Managers (PDMs) in rugby and cricket. PDMs help prospective, current and past players<sup>364</sup> fulfil their potential.<sup>365</sup>

PDMs operate independently from the coaching and selection process on the basis that players will open up to a PDM in a way that he or she will not to a coach or member of team management. PDMs work with players on all aspects of their off-field development and therefore, supporters of the PDM model assert, are in a position to understand and assist each player in a way that an advisor with multiple athletes across different sports, potentially in different locations, never will.

Whatever the delivery model, from a welfare perspective Elite Athletes need to be able to access career, education and personal development support programmes to better equip them during and after their sporting careers. It is critical that the person has the qualifications and expertise to independently and confidentially advise athletes according to what is best for them and not, for example, what is best to keep them competing within their sport.<sup>366</sup>

The role played by Athlete Life is a critical one that directly impacts on Elite Athletes. The question is how the service can be enhanced given the different ages and stages Elite Athletes are at and the perceptions around the quality and independence of the service that were expressed to me in the course of my review. These are matters that I believe need to be separately and independently addressed.

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*about work life balance, but I knew how to do it. Post Rio, there was talk of a part time job opportunity which would have been worthwhile, but nothing came of it."*

<sup>363</sup> When an athlete's holistic development is prioritised then it becomes an integral part of the performance environment; for example, I was told of one sport where the coach discussed the Elite Athlete's personal development in the one on one weekly meetings.

<sup>364</sup> This is the key point of difference with the Athlete Life programme, which an Elite Athlete can no longer access for 6 months after they have stopped being a carded athlete. The Personal Development Programme does not have this limitation.

<sup>365</sup> PDMs work to offer players opportunities to access career and work placement specialists, tertiary and trade education providers and work experience opportunities.

<sup>366</sup> One Elite Athlete was sceptical about advice to continue with additional study, which was perceived to be more about suiting the athlete continuing to compete in their sport than what was in the best interests of the athlete in terms of their life outside or after sport.