CONFIDENTIAL

COMPLAINTS MANAGEMENT AND/OR DISPUTE RESOLUTION SERVICE FOR NZ SPORT: FEASIBILITY STUDY

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9 September 2020

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Section 1: Executive Summary

1. Pursuant to the Terms of Reference approved by the Boards of Sport New Zealand (**Sport NZ**) and High Performance Sport NZ (**HPSNZ**) (together the **Sport NZ Group**), this feasibility study (**Study**) has:

- Considered relevant documentation, existing policies and guidance from Sport NZ on managing complaints and disputes for Inappropriate Behaviour (as defined in the Terms of Reference to this Study);
- Reviewed existing structures (including the statutory framework) and procedures currently used for managing complaints and disputes in New Zealand sport;
- Considered complaint/dispute mechanisms and services in New Zealand in a non-sporting context;
- Undertaken research (and an analysis) of complaints management and dispute resolution systems (**CMDRS**) in three other jurisdictions;
- Consulted widely on the above with key stakeholders in sport and recreation over the past few months;
- Considered preferred options going forward; and
- Recommended two options for a CMDRS.

2. In addition to the Terms of Reference, Sport NZ advised us that our recommendations should:

- cover sport from the grassroots/community levels through to elite level;
- only apply to problems/disputes 'off the field';
- not address match fixing, doping, betting or corruption;
- not extend to a proposal for a creation of a stand-alone new entity (requiring legislative change); and
- be able to fit within existing sport and recreation structures.

3. Working within these constraints, our two recommended options are that the Sport NZ Group:

(a) <u>Creates a Sport & Recreation Mediation Service (**SRMS**) for a two year trial period:</u>

- This SRMS could be established under the Sport and Recreation New Zealand Act 2002 (**SNZA**) (Sport NZ's functions under the SNZA include facilitating the resolution of sports-related disputes) without the need to amend the SNZA or to create a whole new entity;

- In light of the scope/constraints of our Study (as outlined above), our preferred option is that the SRMS is set up by Sport NZ under the SNZA (rather than widening the ambit of the Sports Tribunal), because of the constraints of the Sports Anti-Doping Act 2006 (**SADA**) and perceived independence;

- Participation would be voluntary for the trial period (but potentially tied to funding after that)[1];

1 Refer to paragraph 209 of this Study for further discussion.

- An external third party provider could be used to provide the mediation services, and Sport NZ should undertake a procurement process to appoint an independent provider;

- There would need to be a registry officer and triaging of complaints (which could result in complaints being referred to mediation; back to the National Sporting Organisation (**NSO**) or National Recreation Organisation (**NRO**); or to another relevant authority). The SRMS would also provide education/resources for sport and recreation organisations relevant to the settling of disputes and the services offered.

(b) Appoints a Sports Ombudsman:

- This could be modelled off the Ombudsmen Act 1975 (**OA**);

- The Minister of Justice can give permission to listed organisations, which includes Sport NZ, to use this term[2]; and

- To further ensure independence, (whether actual or perceived), funding for a Sports Ombudsman could come from Treasury via Vote Sport and Recreation, rather than Sport NZ.

- A suitably resourced and empowered Sports Ombudsman could overcome some of the shortcomings of mediation, and provide some other advantages that New Zealand's current Ombudsman regime provides.

4. It is our recommendation that the Sport NZ Group introduce both options.

5. There is a lot of good work that has been done to date on integrity issues (both domestically and internationally) by sport and recreation organisations in New Zealand. However, it was clear from many of those interviewed, and in light of the recent review commissioned by Gymnastics New Zealand into allegations of athlete welfare issues in that sport (as well as the latest culture reviews underway overseas[3]), that there remains work to do.

6. We are aware that the Sport NZ Group (and NZOC and some NSOs) currently have a number of very good initiatives underway in relation to integrity issues in sport. We encourage the Sport NZ Group to consider introducing far wider measures in due course, once our recommended options are introduced for a trial period. In particular, we see a need for a national (government-funded) Sport Integrity Unit. This Unit should be aligned to (and monitor) international integrity standards and could oversee the operation of the SRMS and Sports Ombudsman. In our view this will require the development of strategy by those actively providing leadership and service in relation to integrity issues in New Zealand sport. We suggest a working group is convened of representatives of these organisations, plus athletes and player associations (to ensure they have involvement, rather than consultation,

2 Ombudsmen Act 1975, section 28A.
3 See for example, the Canadian Hockey League (facing a proposed class action suit about systemic hazing, bullying and harassment) has recently launched an independent review.

in policy development). This working group could be similar to the UCCMS in Canada (see Section 6), to bring this strategy together over our recommended two year trial period.

Section 2: Background

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INTRODUCTION

7. Sport makes a significant contribution to the wellbeing and happiness of many New Zealanders, and involves a wide range of organisations and individuals (including, but not limited to, NSOs, NROs, regional organisations, clubs, and their associated employees, players, coaching staff, spectators and volunteers (**Participants**)). Every day, many thousands of New Zealanders take to fields, courts, and other dedicated or public spaces to compete socially and competitively. For the vast majority, the experience is positive. Sport NZ's Sport Integrity Review (**Integrity Review**) released in September 2019 highlighted the importance that sport plays in helping people become happier, healthier and better connected to their communities.

8. Sport NZ is the entity that has oversight responsibility for sports and recreation in New Zealand. This Study and the Terms of Reference cover both sport and recreation in New Zealand, however in this Report the term "sport" is used to encompass the entire sport and recreation system in relation to integrity matters. There are over 100 sports affiliated to Sport NZ. These affiliated NSOs range from sports played almost exclusively at community level, to highly regulated and professionally run organisations at national levels. In addition, there are a number of new sports that do not yet have an NSO. There are also over 20 NROs, which include the Girl Guides Association of New Zealand, YMCA and the Scouts Association of New Zealand.

9. The last few years have illustrated the challenges posed by integrity issues to the health of some New Zealand sports. High-profile issues were raised within sports such as football, hockey and cycling, each of which led to independent investigations at the national level[4] (**Culture reviews**). In many instances, a key concern raised has been the lack of robust complaints processes and mechanisms to enable issues to be raised in the first instance, or to then resolve them.

SPORT NZ INTEGRITY REVIEW 2018-19

10. In response to some contemporary challenges to sport integrity, Sport NZ undertook an Integrity Review from October 2018 to December 2018. While New Zealand has long had various initiatives in place to protect and promote the integrity of sport, the environment indicated a review was needed to determine whether existing measures were fit-for-purpose and to identify any potential gaps.

11. The Integrity Review highlighted that the positive outcomes for New Zealanders from sport and recreation are reliant on integrity issues not discouraging participation in, and access to sport and its benefits. As well as being vital to maintaining the engagement of those who enjoy its benefits, the preservation of integrity within New Zealand sport is also fundamental to sport itself, both in terms of the public interest (and commercial viability of sport), and the promotion of a national sporting culture which prides itself on being corruption free and encouraging fair play.

4 Michael Heron QC "Independent Review of Cycling New Zealand High Performance Programme", 2018; Hockey NZ Review 2019; Phillipa Muir "Independent Review into NZ Football", 2018.

12. The Integrity Review identified that sport integrity issues have previously occurred in New Zealand (including child sexual abuse within sport, poor sideline behaviour and match fixing). The Integrity Review also acknowledged that some of the conditions and risks that allow sport integrity breaches to occur overseas, were evident within New Zealand's sporting environment. Accordingly, taking action in relation to sport integrity would demonstrate New Zealand's commitment to encouraging participation and public confidence in sport, mirroring the recent approaches taken by similar jurisdictions, such as Australia and Canada.

13. The Integrity Review involved public consultation on sport integrity, seeking the views of a wide range of organisations and individuals involved in sport across New Zealand, ranging from government bodies to individual sports clubs.

14. The Findings and Recommendations of the Integrity Review were released in September 2019 and included 22 Recommendations (**Appendix 1**). Recommendation One focussed on dispute resolution and reporting and included:

(a) *Pilot an independent sports complaints management service.*

(b) *Investigate whether a sports mediation service should be established*.

15. As an interim step, while terms of reference for a feasibility study for a sports complaints management service were being developed, the Sport NZ Group set up an independent Interim Complaints Mechanism (**ICM**) in 2019 for high performance and campaign athletes, and employees or contractors of Sport NZ and HPSNZ. This service is run by Wellington barrister Steph Dyhrberg (who provides a similar function for New Zealand Rugby (**NZR**)). The ICM enables athletes to raise a complaint and be advised about the appropriate steps by Ms Dyhrberg. The ICM is discussed in more detail in Section 4 of this report.

TERMS OF REFERENCE FOR THIS STUDY

16. The Terms of Reference developed by Sport NZ for this Study are attached (**Appendix 2**). Simpson Grierson was appointed by the Sport NZ Group to undertake the Study in accordance with the Terms of Reference, including:

(a) <u>Purpose of the Study</u>

- The mechanism or service which is proposed, should achieve the following objectives in managing Inappropriate Behaviour (which includes harassment, bullying, abuse, discrimination, match fixing, doping, betting, corruption, abuse of power, other ethical breaches, unfair decision-making processes):

  - To support the development of a 'speak up' culture;
  - To provide for an independent complaints mechanism that anyone can use to report Inappropriate Behaviour in New Zealand sport (from high performance to grassroots);

- To ensure a fair and efficient resolution of complaints and disputes;
- To ensure efficient use of resources, expertise and capabilities;
- Not to affect the rights of parties to take other action;
- To enable sports to comply with their obligations to their International Federations;
- To comply with the law, including likely changes to the Incorporated Societies Act; and
- To be a national service, incorporating all key stakeholders.

(b) Scope of Work

- Develop no more than three options for a CMDRS, which shall include;
  - The structure, governance, powers, scope and procedures for each option;
  - The advantages and disadvantages of each;
  - Whether any option should be mandated or optional and if so, how; and
  - Any reasons why the CMDRS may not be appropriate for both professional and amateur sports.
- Assess the feasibility of each option in consultation with stakeholders.
- Identify the steps, and nature and extent of resources, required to implement and operationalise each option.

17. As part of this Study, well over 50 interviews were held with key stakeholders and individuals in the New Zealand sport and recreation sector, including representatives of: NSOs; NROs; athlete and player associations; administrators; Sport NZ; HPSNZ; New Zealand Olympic Committee (**NZOC**); and Paralympics New Zealand. A summary list of the interviewees is at **Appendix 3**.

CURRENT SPORTS STRUCTURES

Sport New Zealand

18. The SNZA created the current overarching framework for sport in New Zealand. This Act established Sport and Recreation New Zealand (**SPARC**) as a Crown entity on 1 January 2003.[5] SPARC was created with an express purpose to "*promote, encourage, and support physical recreation and sport in New Zealand*.[6] On 1 February 2012, SPARC changed its name to Sport NZ. It has, at all times, been responsible to the Minister of Sport and Recreation via its board of directors.

19. In 2011, HPSNZ was formed by merging the SPARC high-performance unit with two New Zealand academies of sport. HPSNZ is a wholly-owned subsidiary of Sport NZ, which is responsible for leading the country's high performance sporting system. Sport NZ and HPSNZ are governed by separate Boards, but with the same Chair.

20. As a Crown entity, Sport NZ is accountable through the Ministry for Culture and Heritage to the Minister for Sport and Recreation (currently the Hon. Grant Robertson), and is also regulated by the Crown Entities Act 2004. It receives funding from both the Crown and the New Zealand Lottery Grants Board.

21. Section 3 of the SNZA states Sport NZ's statutory purpose is to "*promote, encourage and support physical recreation and sport in NZ*". Further, section 8 of the SNZA provides that the functions of Sport NZ include:

(a) Facilitating the resolution of disputes between persons or organisations involved in physical recreation and sport; and

(b) Providing advice and support for organisations working in physical recreation and sport at national, regional, and local levels.

22. These statutory functions provide a mandate for Sport NZ's involvement in identifying and addressing gaps in dispute resolution in sport in New Zealand.

23. Sport NZ's new Strategic Plan 2020-2024 (**Strategic Plan**) has a strong focus on tamariki (5-11 years) and rangatahi (12-18 years) and its key results areas in relation to those groups include:

(a) Reducing the drop-off in activity in rangatahi;

(b) Improving activity levels for those tamariki and rangatahi who are less active; and

5 Sport and Recreation New Zealand Act 2002, section 2.
6 Sport and Recreation New Zealand Act 2002, section 3.

(c) Strengthening its kaitiaki role within the Play, Active Recreation and Sport system by improving system issues, such as:

- integrity;
- diversity and inclusion;
- research;
- reporting; and
- reflecting Te Tiriti o Waitangi through embedding Treaty Principles.

24. The focus on tamariki and rangatahi in the Strategic Plan is part of Sport NZ's wider vision of inclusiveness within sport, and the provision of access to sport for all New Zealanders, regardless of factors such as gender, ethnicity, disability, sexual orientation, or location.

25. In addition to its key result areas regarding tamariki and rangatahi, the Strategic Plan also acknowledges the need for Sport NZ to deliver upon its commitments in response to the Government's Women and Girls in Sport and Active Recreation Strategy, the 2019 Disability Plan, as well as acting on the recommendations made in the Integrity Review.

Sports Tribunal of New Zealand

26. The Sports Tribunal of New Zealand (**Sports Tribunal**) was established in 2003 by SPARC and has continued under that name pursuant to s 29 of the SADA. The Sports Tribunal was established as an independent body to hear and decide certain types of disputes for the sports sector.

27. The Sport, Fitness and Leisure Ministerial Task Force recommended that a sports disputes tribunal be set up to "*have a primary focus on national sport to assist NSOs to avoid lengthy and costly legal battles; ensure quality and consistent decision making for athletes in NZ sport; add credibility to the operation of elite sport in NZ and provide for appeals to the Court of Arbitration of Sport*"[7].

28. The membership of the Sports Tribunal includes a number of experienced officers with a strong knowledge of the sporting sector. It has a strong reputation for independence and is highly regarded internationally. These members include a mix of experienced lawyers (including retired judges and Queen's Counsel), as well as retired athletes and sporting administrators.

29. In terms of resourcing, there is a registrar of the Sports Tribunal who oversees the Sports Tribunal's administrative and logistical work. This is not a full time role and the resource is shared with Sport NZ. The table below shows the breakdown of Sports Tribunal decisions for the period 2010-2019:

7 Sport, Fitness and Leisure Ministerial Taskforce "Getting Set for an Active Nation", 2001, page 108.

Year	Number of Decisions	Anti-Doping	Jurisdiction	Selection	Natural Justice	Mediation	Challenge to NSO Rule/Decision	Application for Rehearing
2010	16	11	2	1	1	1		
2011	17	13		1	1		2	
2012	6	5		1				
2013	8	7					1	
2014	13	6		5			1	1
2015	10	3		5			2	
2016	13	5		7			1	
2017	15	12					3	
2018	19	16		3				
2019	11	7		3			1	
Total	128	85	2	26	2	1	11	1

Drug Free Sport New Zealand

30. Drug Free Sport New Zealand is a Crown entity established under the SADA. It is government-funded and accountable to the Minister for Sport & Recreation and the New Zealand Government. The agency is responsible for implementing and applying the World Anti-Doping Code in New Zealand.

31. Drug Free Sport New Zealand provides:

(a) Testing programmes – for detecting and determining drug use (which can include collecting samples; monitoring; investigations; referring matters to the Sports Tribunal); and

(b) Education – for athletes (so that they have an understanding of the anti-doping rules and their rights and responsibilities) and sports administrators and medical professionals (about the roles they play in helping create a culture of clean sport and compliance).

32. Currently, Drug Free Sport New Zealand has approximately 14 staff, plus over 100 contractors to undertake education (which is seen as a key area of focus), testing and investigations.

NZ Olympic Committee

33. There are also a number of organisations such as (but not limited to) the NZOC that have a well-defined Integrity Framework that aligns to International Olympic Committee (**IOC**) integrity best practice and which all participants must adhere to during the period of the Games. This Integrity Framework assists the NZOC to focus on crucial relationships and documents, as well as identifying any gaps.

34. NZOC's Integrity Framework covers:

(a) Internal relationships (business strategy; employment agreements; code of ethics; policies & procedures; terms of reference);

(b) NSOs (constitution; integrity regulation);

(c) Games period (athlete agreements and support; child protection policy; team manaakitanga); and

(d) External agencies (IOC; CGF; Sport NZ Group; Sponsors; MOUs; Drug Free Sport/WADA etc).

35. NZOC has also developed:

(a) An Integrity Regulation (this covers anti-doping, anti-match fixing and athlete entourage obligations for Team members);

(b) A Code of Ethics (covering anti-doping, anti-match fixing and athlete entourage obligations for staff and contractors); and

(c) Athlete and Team Support Agreements (that are signed by all Team Members prior to being selected/appointed to the New Zealand Olympic Team).

36. NZOC advised that the IOC and others in the international community (including Interpol and UNODC) have a renewed focus on anti-match fixing and corruption. The IOC is working strongly with National Olympic Committees (**NOCs**) to ensure the NOCs meet IOC's three pillars of Regulation, Education and Intelligence (including three-monthly forums in the international environment, led by IOC, Interpol and UNODC on how to improve, engage and learn in each of these three pillars).

New Zealand Sport and Recreation Landscape

37. The sport and recreation landscape in New Zealand extends far wider than just NSOs. Sport NZ's remit also includes the regional sports trusts and the NROs such as the Girl Guides Association of New Zealand, and the Scouts Association of New Zealand. Most of the larger NSOs/NROs that the Sport NZ Group invest in, or organisations within the sector that Sport NZ is the kaitiaki of, have systems in place for dealing with complaints and breaches of rules. However, some of these NSOs/NROs do not expressly refer to Inappropriate Behaviour as being within the scope of what can be dealt with via a formal internal complaints system.

38. With more than 100 NSOs and over 20 NROs, there are many different types of complaint systems in use, reflecting the wide spectrum of activities and organisations invested in by the Sport NZ Group, or that Sport NZ is the kaitiaki of. This ranges from high profile and well-resourced organisations, through to community and/or voluntary organisations.

39. Some organisations operate well defined, sophisticated and best practice systems for internal dispute resolution, while others (typically, although not always, those organisations representing the lower profile sports) do not have policies on what a participant should do if they encounter an integrity issue, and tend to operate on a more ad-hoc, informal basis in relation to complaint systems. Interviewees advised us that many of the smaller, low-resourced organisations face a number of challenges in relation to their complaint systems, which include:

(a) limited knowledge regarding policies and procedures to address complaints;

(b) limited capability regarding the resolution of disputes; and

(c) limited time and resources to deal with complaints, particularly where a high percentage of an organisation's workforce are volunteers.

40. Managing people issues requires knowledge of New Zealand employment law, which is not always a capability strength (or resource) of NSOs/NROs.

41. NSOs/NROs in New Zealand have a variety of different methods and processes regarding the management and resolution of complaints. This variability is influenced by a number of factors including resources and knowledge, the nature of the organisation's workforce and organisational structure (for example, some NSOs have a linear organisational setup of club, region, and NSO; whereas other NSOs do not have a club or regional structure, or have a provincial setup instead). The details of some examples of existing complaint systems in New Zealand sport and recreation are discussed in further detail in Section 4 of this Study.

Section 3: Recent Sport Reviews In New Zealand

2015 REVIEW OF SPORTS TRIBUNAL – DON MACKINNON[8]

42. Don Mackinnon's 2015 review of the Sports Tribunal acknowledges that the Sports Tribunal is held up internationally as a good example of a complaints process, however it observes that the Sports Tribunal does not meet all of the dispute resolution needs of the sports sector. The report states that "*there are growing concerns within the sector that too often the wrong types of dispute are being litigated before the Tribunal. Furthermore, the cost of litigation has had an enormous impact on a number of participants."*[9]

43. The report notes that most cases (other than anti-doping proceedings) before the Sports Tribunal seem to have arisen through poor communication and/or clashes of personality, and non-compliance with rules and policies. The report describes the consequences as being "*protracted and acrimonious litigation at very significant cost to parties with limited financial resources."*[10]

44. The report highlights that apart from anti-doping proceedings and urgent selection cases (which may be unsuitable for alternative dispute resolution), the parties proceed to litigation in the Sports Tribunal without having first attempted any form of alternative dispute resolution such as mediation: "*in the author's view, the lack of promotion of mediation, or any similar form of alternative dispute resolution, is a substantial gap in the current dispute resolution needs of New Zealand sport".*[11]

45. Mr Mackinnon's review recommends the promotion of mediation through the sports sector. In particular, the report highlights that mediation gives parties the opportunity to communicate and look at more inclusive solutions that can be kept private and out of the public arena. Keeping the relationship healthy is also an important consequence. The Executive Summary of the report concludes: *"the time is right to establish a Sports Mediation Service"*, [12] operating independently from the Sports Tribunal.

46. The report suggests that all cases falling outside anti-doping proceedings and urgent selection cases, should attempt mediation before proceeding to the Sports Tribunal, if there are no good reasons for them not to (such as a lack of time).

47. Separate from the Sports Tribunal, the report notes that there is a "*broader mediation need within the sport sector*". [13] Many of the report's interviewees commented on the significant amount of conflict which NSOs deal with (or struggle to deal with) on a daily basis. There appeared to be little attempt to mediate these issues and some turned into formal legal proceedings. Accordingly, it was recommended that a mediation system should be available to a wide range of sports, not just those within the jurisdiction of the Sports Tribunal.

8 Don Mackinnon "A Review of the Sports Tribunal in New Zealand", 2015.
9 Page 3.
10 Page 3.
11 Page 3.
12 Page 4.
13 Page 4.

48. On the topic of a broader mediation system, the report says that a system should be flexible in how it operates – some issues requiring formal mediation, and others a facilitated discussion. The report notes that the barriers for entry for a broader mediation system, such as the costs of mediation, must be kept low, and that the sport sector must be actively encouraged to use the service, with Sport NZ functioning as a "*champion*". [14]

49. The report notes that "*there was overwhelming support from almost every person interviewed for the creation of some form of dedicated mediation service for sport.*"[15]

50. The report's recommendations included:

(a) The establishment of a sports mediation service for disputes before the Sports Tribunal and also for disputes at a broader national level; and

(b) The Sport Tribunal's rules being amended to provide for active promotion of mediation in all cases excluding anti-doping, and to insist that parties proceed to mediation in all cases unless good reasons exist for not doing so.

2018 REVIEW OF ELITE ATHLETES' RIGHTS AND WELFARE - STEVE COTTRELL[16]

51. Steve Cottrell's 2018 report highlights the lack of alignment between the vision and culture of some NSOs. The report notes that in New Zealand, typically *"the system waits until there is a chorus of complaints of bad behaviour or sufficiently bad results before interventions are made*"[17], particularly in relation to coaching or other leaders.

52. NSOs, particularly those of HPSNZ targeted sports, are lean organisations – so a focus should be on how to meaningfully support and upskill those NSOs.

53. The report considers an option such as a whistleblowing hotline for athletes. It notes that a hotline is only an effective tool if athletes use it, and the report was reasonably sceptical about it as a solution – saying "*a 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.*"[18]

54. The report notes that some NSOs have processes in place for dealing with complaints, anonymous or otherwise, while others do not.

55. The report goes on to say that it is "*in all parties' interests for grievances to be resolved at an early stage.*"[19] Similar to Mr Mackinnon's report, Mr Cottrell points out why the win/loss dynamic is ill-suited to sports. If an elite athlete raises an issue about a coach, and the dispute goes to the Sports Tribunal, the likely result is either a disengaged/disillusioned athlete or a situation where the NSO fails to back the coach.

14 Page 5.
15 Page 5.
16 Stephen Cottrell "Elite Athletes' Rights and Welfare", 2018.
17 Page 8.
18 Page 57.
19 Page 59.

56. The report recommends that elite athletes should be able to access an independent system which focuses on early resolution of issues where possible, but have the ability to independently investigate and determine matters where it is not. The report explicitly agrees with Mr Mackinnon's recommendation of the creation of a sports mediation service, as an outstanding resource for the New Zealand sporting community. The report also considers other options, such as broadening the jurisdiction of the Sports Tribunal, a customised online dispute resolution system, and appointing a person or body to act as a clearing house. The report says that *"these are matters which should be further considered as part of the Sport Integrity review."*[20]

57. The report's recommendations included:

(a) Consultation between sporting organisations and their stakeholders (including elite athletes) on the key structural and cultural elements required to address the welfare needs of elite athletes (such as forums and opportunities for elite athletes to be heard, as well as policies and dispute resolution processes)[21]; and

(b) Mediation being prioritised as a means of resolving disputes which are not able to be addressed through internal mechanisms in the first instance[22].

2018 CYCLING NZ HIGH PERFORMANCE REVIEW – MICHAEL HERON QC[23]

58. The 2018 report of Michael Heron QC focuses on cultural issues within the Cycling NZ High Performance Programme, including poor accountability, leadership and a lack of consequences for poor behaviour. Mr Heron found that the policies and procedures of Cycling NZ were inadequate to protect the athletes. There was a reluctance on the part of athletes to raise concerns, and a lack of accountability if they were raised.

59. In the report's recommendations, it was noted that HPSNZ and Sport NZ should consider whether wider measures to protect athlete welfare might include an independent welfare and conduct body, as well as greater support or assistance for NSOs and the player advocates and bodies acting for players. The report did not address or recommend any specific measures relating to complaints management or dispute resolution.

2019 HOCKEY NZ REVIEW [24]

60. In 2018 Maria Dew QC conducted a review (commissioned by Hockey NZ) into the Black Sticks Women's team environment and player welfare. For privacy reasons Ms Dew's report was redacted. Hockey NZ then released a Summary of Review Findings on 25 February 2019.

20 Page 60.
21 Page 10.
22 Page 73.
23 Michael Heron QC "Independent Review of Cycling New Zealand High Performance Programme", 2018.
24 25 February 2019.

61. Hockey NZ's public Summary of Review Findings included the following key conclusions:

(a) There was a clear disconnect between the majority player view of a negative environment, and the almost unanimous view of the Hockey NZ and HPSNZ staff, of a positive environment;

(b) A small number of players and representatives had been informally raising concerns about the Black Sticks Women's team environment for several years. However, Hockey NZ had not previously received any formal complaint of bullying behaviour; and

(c) Hockey NZ had not committed sufficient resource, or given adequate consideration, to the Human Resource and Sports Duty of Care aspects of the Black Sticks Women's team player welfare, in its policies and procedures.

62. Key recommendations included Hockey NZ engaging an experienced Human Resources consultancy to provide revised HR policies and procedures including a workplace code of conduct for staff and players.

63. The Summary of Review Findings did not directly discuss or make any explicit recommendations in relation to complaints management or dispute resolution.

2018 NZ FOOTBALL REVIEW – PHILLIPA MUIR[25]

64. Phillipa Muir's 2018 report arose from a dozen written complaints made by Football Ferns to the player's union (NZPFA) who subsequently submitted them to NZ Football. Overall, the complaints alleged bullying on the part of the coach (and some failings on behalf of NZ Football management and the Board), which were largely found to be substantiated.

65. The report notes that NZ Football had "*no proper complaints processes for elite football players*"[26].

66. The report also noted that NZ Football had a poor record of managing complaints. Informal concerns or complaints were handled on an ad-hoc basis by individuals, and there was no process or pipeline for handling/resolving formal concerns.

67. The report's recommendations included the development of a robust player complaints procedure to enable concerns to be raised early and safely, in response to the lack of an adequate complaints process for players in the high performance environment. NZ Football has subsequently confirmed it is addressing/adopting all of the recommendations in the report.

25 Phillipa Muir "Independent Review into NZ Football", 2018.
26 Page 9.

2019 NEW ZEALAND 'ATHLETE VOICE' APPROACHES REPORT – SARAH BEAMAN[27]

68. In 2019 the Sport NZ Group commissioned Sarah Beaman to undertake a piece of work relating to 14 HPSNZ targeted sports in the area of athlete voice.

69. The report makes it clear (after interviews with athletes and players associations) that there is no 'one size fits all' solution to athlete input in NZ sport. It notes the natural delineation between professional and amateur sports indicates that an independent players association model would not be a sustainable one to apply across amateur sport.

70. A suggested Athlete Input Checklist was provided, proposing nine core foundations for an amateur sport model (to address the high performance environment, athlete needs, and resourcing profile of each NSO).

71. It was also suggested that if there was government investment available to support athlete input approaches in amateur sport, then there may be opportunities for innovation around the sharing of resources and support without necessarily creating or investing in additional infrastructure for athlete input. Further, it was recommended that decisions around sport-system input models or support mechanisms would benefit from a co-design approach with athletes and other stakeholders.

COMMON THEMES FROM SPORTS REVIEWS

72. The recent sport reviews indicate a number of consistent themes and recommendations in relation to complaints management and dispute resolution, namely:

(a) The importance of having a robust, and accessible procedures for making complaints and the need for stakeholder engagement (including athletes and players) in developing these procedures;

(b) The benefits afforded by an early resolution process as a way of settling disputes in the first instance, before being elevated to say, the Sports Tribunal, or being aired in the public arena; and

(c) There are a wide range of complaints policies (with differing levels of effectiveness) currently applying in NSOs/NROs in New Zealand.

73. Sport NZ's Integrity Review and the commission of this Study is therefore timely in addressing the gaps identified by the Culture and other reviews regarding the need to have an accessible and consistent CMDRS for sport, regardless of the size or the resources of the relevant organisation.

27 Sarah Beaman "New Zealand 'Athlete Voice' Approaches Report, 2019.

Section 4: Current CMDRS Processes in New Zealand (In Sport)

HPSNZ – INTERIM COMPLAINTS MECHANISM

74. As stated above, many New Zealand sports organisations currently have their own internal dispute resolution processes, but they vary in terms of structure, scope and effectiveness.

75. In May 2019 (following the Integrity Review), the Sport NZ Group appointed Ms Dyhrberg to manage an ICM for high performance athletes, employees and contractors of Sport NZ and HPSNZ.

76. The ICM is funded by Sport NZ and is designed to enable people to raise concerns relating to inappropriate or objectionable behaviour within high performance sport.

77. A complaint can be made confidentially to an 0800 number or via an online complaints form. The ICM is referred to on HPSNZ's website and states:

> ***Who can complain?***
>
> *Where a National Sporting Organisation (**NSO**) has high performance carded athletes, anyone can raise a complaint about high performance or campaign athletes, employees or contractors of the NSOs, as well as HPSNZ and Sport NZ staff embedded in the NSOs.*
>
> ***What can I complain about?***
>
> *Complaints may be raised in relation to any of the following matters:*
>
> - *Bullying*
> - *Harassment*
> - *Inappropriate behaviour*
> - *Risks to player wellbeing, including mental health issues*
> - *Breaches of any applicable NSO Code of Conduct or Code of Ethics*
>
> ***Note:** This complaint process will not deal with the following matters, which are subject to the jurisdiction of the Sports Tribunal:*
>
> - *Anti-doping rule violation procedures*
> - *Appeals by athletes against decisions denying a therapeutic use exemption*
> - *Appeals by athletes regarding funding*
> - *Appeals against selection or disciplinary decisions of NSOs or the New Zealand Olympic Committee*
> - *Matters referred to the Sports Tribunal with the agreement of the parties or matters already being considered by the Sports Tribunal*
> - *Matters referred to the Sports Tribunal by Sport NZ.*

What can I expect?

The independent facilitator will listen to your complaint.

The facilitator will tell you whether your complaint is something that can be dealt with through this process and if not, whether there are other options for pursuing your complaint.

They will ensure that you have all the information that is necessary for your complaint to be dealt with.

If the complaint can be dealt with through this process and does not need to be escalated for any reason, the facilitator will attempt to facilitate a resolution between the parties.

If agreement is reached the key terms will be recorded in writing by the facilitator and sent to both parties.

If agreement is not reached, the facilitator will discuss with you what your options are.

The details of all complainants will be kept confidential by the facilitator unless the facilitator deems there is an imminent risk of serious harm.

While complaints will be kept anonymous as far as possible, effective dispute resolution usually requires the active participation of all parties. If the facilitator considers it necessary to disclose complainant details to enable complaints to be effectively addressed, they will seek consent from the complainant before disclosing any complainant details.

78. Ms Dyhrberg was interviewed as part of this Study (as were representatives of HPSNZ) and we also asked other interviewees if they were aware of the ICM. At least one elite athlete who had workplace concerns, told us that they were not aware of the ICM. Ms Dyhrberg said that to date there has been low reporting of complaints to the ICM. Various views were voiced as to why this might be, including a need for greater education/promotion of the service; a reluctance to "speak up"; and/or concern as to whether the ICM could resolve matters.

NZ RUGBY COMPLAINTS PROCESS

79. The 2017 Respect and Responsibility Review into NZR recommended that an independent complaints process be established, to provide ready access for people to raise complaints about off-field inappropriate or objectionable behaviour from anyone involved in rugby.

80. NZR appointed Steph Dyhrberg as an independent manager of the complaints process in January 2018. The purpose of the process is to allow complainants to contact an

independent person who will assist them in resolving their concerns. Ms Dyhrberg advised us that she had dealt with a number of matters since her appointment.

81. There is a confidential 0800 number and an online complaints process which the independent manager monitors/triages.

82. The role of the independent manager has evolved over time. Ms Dyhrberg has the scope to act as a facilitator and participate actively in assisting the parties to resolve matters.

83. NZR has sought to publicise the existence of the complaints process. However, ensuring all those who are involved in rugby are aware of the process remains a challenge. This may be having an impact on the level of uptake.

84. Player issues at elite level are dealt with under the provisions of the relevant collective employment agreement (as those players are employees), and these processes are well-defined and provide for mediation under the Employment Relations Act 2000 (through the Ministry of Business, Innovation and Employment (**MBIE**)).

85. NZR advised that their complaints process is working well, but if there was a national (and cost-effective) mediation service for sport, they may be interested in using it as well.

OTHER SPORTS AND RECREATIONAL CMDRS PROCESSES

86. There are a wide range of dispute resolution policies and procedures in sport and recreation entities in New Zealand, however there are a few common features in many organisations.

87. Within a number of organisations, the management of complaints and dispute resolution occurs within a multi-tiered system where parties can appeal the decisions of various bodies. For example, under the Tennis New Zealand Participant Protection Policy, complaints are typically made to a Protection Information Officer of a Tennis New Zealand entity (**TNZE**), or the Regional Protection Information Officer. The recipient of the complaint has a number of options available to them (including facilitation or mediation, or referral to the Human Rights Commission or the relevant TNZE for a hearing). Following a hearing, and in limited circumstances, parties can appeal against the TNZE's decision to the next highest TNZE in the Tennis New Zealand hierarchy.

88. Often, parties are provided with ultimate recourse to appeal an internal decision to the Sports Tribunal. In some NSOs (such as Snow Sports New Zealand), this ability to appeal to the Sports Tribunal is limited to grounds such as where natural justice has been denied, where a decision maker has acted outside its powers and/or jurisdiction, or where a penalty imposed is excessive or inappropriate. [28] In other NSOs, such as New Zealand Rugby League (**NZRL**), the right to appeal to the Sports Tribunal is not limited to prescribed requirements, however appellants must have exhausted their rights of appeal under NZRL's Constitution and Regulations.[29]

28 Snow Sports New Zealand Incorporated "Constitution", rule 27.8.
29 New Zealand Rugby League Incorporated "Constitution", rule 31.

89. Some NSOs/NROs have a number of different avenues through which to direct complaints, which are dependent on factors such as the origin and seriousness of the complaint. For example, the Scouts Association of New Zealand provides for complainants to either make an informal complaint or a formal complaint, but parties are encouraged to try an informal approach to obtain resolution in the first instance. The hierarchical structure of the Scouts Association of New Zealand makes it appropriate for complaints to be directed to and handled by specified individuals. For example, where a formal complaint involves a Scout Group, the Group Leader (or nominee) will investigate and make a decision on the complaint. Where a formal complaint involves a Group Leader, the Zone Leader (or nominee) will investigate and make a decision on the complaint.[30]

90. In a range of NSOs/NROs, internal decision-making bodies (for disputes) have the ability and discretion to impose a number of different sanctions (including, but not limited to penalties, suspensions from competition, and non-binding recommendations to the NSO's/NRO's board or other entity within that NSO's/NRO's organisational structure). It is relatively common for these decision-making bodies to be comprised of, or appointed by the NSO's/NRO's board, and requiring a combination of legal experience, and knowledge of the sport.

30 Scouts New Zealand "Complaint Policy & Guidelines – Roles and Responsibilities (POL-103B).

Section 5: Current CMDRS Processes In NZ (Outside Sport)

91. There are a variety of CMDRS processes currently operating outside of sport in New Zealand. Set out below are some examples – this is not a comprehensive list.

EMPLOYMENT RELATIONSHIP PROBLEMS

92. MBIE operates Employment Mediation Services for New Zealand employees and employers. This includes a free mediation service for employment relationship problems (run by MBIE) and, for disputes that do not settle (or do not elect mediation) they can proceed to an investigation meeting before the Employment Relations Authority (with various rights of appeal).

93. Mediators are independent and their role is to assist the employee and employer resolve employment relationship problems in a semi-formal and confidential environment. MBIE trains the mediators and provides them at no charge to parties.

94. Either party can seek the assistance of this mediation service at any time to deal with their problems. While parties are encouraged by MBIE to raise their concerns directly with each other in the first instance, there is no requirement that internal processes need to have been exhausted first. If legal proceedings have not been filed, attendance at mediation is voluntary. In our experience, Employment Mediation Services has the support of employers and employees in New Zealand, and is well utilised, even at the preliminary dispute stage.

95. Following a request for mediation, parties are contacted by Employment Mediation Services staff to find a suitable time and place for mediation to take place. Mediations are usually held on MBIE's premises, but can be held elsewhere as requested. MBIE can cater for special requests at the mediation meeting, such as organising an interpreter, or accommodating cultural needs (including arranging for the mediation to occur at a marae).

96. Recently available figures indicate that there were 4,601 employment mediations completed in the 2018/2019 year by MBIE[31], and there were 39 mediators employed by the Ministry in the same year. MBIE reports there were 8,931 recorded settlements in 2018/2019.[32]

31 Ministry of Business, Innovation and Employment Annual Report 2018/2019, 2019, page 6.
32 Ministry of Business, Innovation and Employment Annual Report 2018/2019, 2019, page 57.

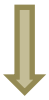
97. The following is an overview of the mediation process for employment relationship problems[33]:

An employee, employer or union asks for mediation.

Employment Mediation Services contacts the other party.

If a mediation meeting is the best option, a meeting date will be arranged. Both parties will be told in writing of the time and place.

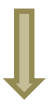
Parties can continue to seek resolution with the other party, and obtain more information to help reach an acceptable outcome.



Parties to decide if they need support, and if they do, choose who it will be.

Prepare for the mediation meeting.

The meeting takes place.



If parties agree to a settlement, the mediator records the details and an agreement is signed. If parties do not reach agreement, the mediator will ensure the parties are clear about their options.

HUMAN RIGHTS AND PRIVACY MEDIATIONS

98. Both the Human Rights Commission (**HRC**) and the Office of the Privacy Commissioner (**OPC**) offer mediation as a way of resolving disputes regarding human rights and privacy breaches respectively.

99. Under the Human Rights Act 1993 (**HRA**), one of the HRC's primary functions is to facilitate the resolution of disputes in the most efficient, informal and cost-effective manner possible, through the offering of services to facilitate resolution of complaints, including information, expert problem solving and mediation.[34] The HRC provides a free, impartial and confidential dispute resolution service, and depending on the seriousness or complexity of the complaint, may refer parties to mediation. Mediation includes the mediator explaining the HRA, clarifying the issues and finding practical ways to resolve the complaint.

100. The scheme of the complaints provisions in the Privacy Act 1993 (**PA**) requires the OPC, from the very beginning of the complaints process, to be proactive in trying to resolve the complaint through conciliation. In accordance with the statutory scheme, the OPC also offers mediation to assist parties to resolve disputes following a complaint to the OPC. The OPC refers to its mediation process as conciliation conferences. The Privacy Commissioner can call a conference of the parties to a complaint (either face to face, or over the phone), in order to identify the matters in issue between the parties, and to try and obtain agreement in resolution of the issues.[35] Where parties do not resolve the dispute at mediation, proceedings can be filed in the Human Rights Review Tribunal.

OMBUDSMAN SCHEMES

101. The Ombudsman jurisdiction in New Zealand was introduced by the Parliamentary Commissioner (Ombudsman) Act 1962, and is now governed by the OA. The OA provides a broad jurisdiction to investigate decisions, recommendations, acts, or omissions relating to a matter of administration and affecting any person in a personal capacity, in or by any central government department or organisation specified in the OA.

102. Any such investigation can be made on a complaint to an Ombudsman by any person, or of the Ombudsman's own motion.[36] In limited circumstances, the Ombudsman also has the discretion to refuse to investigate or further investigate complaints, but must inform the complainant of this decision and provide reasons for it.[37]

103. The Ombudsman does not have the capacity to make binding recommendations and formal recommendations are rare, due to complaints generally being informally resolved. In the 2018/2019 year, the Office of the Ombudsman received 7,522 OA complaints and contacts concerning OA matters, and made 10 recommendations. [38]

34 Section 76.
35 Section 76.
36 Ombudsmen Act 1975, section 13(3).
37 Ombudsmen Act 1975, section 17.
38 Office of the Ombudsman "Annual Report 2018/2019", 2019, at page 6.

104. The effectiveness of the parliamentary Ombudsman scheme, and the need for private sector industries to self-regulate, has led to the banking and insurance sectors adopting similar regimes, with the establishment of the Banking Ombudsman Scheme (**BOS**), and the Insurance and Financial Services Ombudsman Scheme (**IFSOS**) respectively.

105. The purpose of the BOS is to help resolve and prevent problems in the banking sector by looking into complaints made by customers about their banks. The BOS Terms of Reference state that the complaint handling procedure is generally to gather relevant information, try to facilitate a mutually agreed resolution, and issue a decision (which may include the payment of a sum of money and state a deadline for acceptance).[39] A BOS decision becomes binding on a bank if accepted by a complainant by the stated deadline as a full and final settlement. If not accepted, the complainant is free to take legal proceedings against the bank.[40]

106. The conciliation process is conducted by a formally trained employee of the BOS, and is independent. They do not have the capacity to make binding decisions.

107. The purpose of the IFSOS is to help resolve complaints arising out of the provision of financial services (such as breaches of contract, statutory obligations and industry codes), in a way that is accessible, independent, fair, accountable, efficient and effective.[41] The IFSOS Terms of Reference gives the IFSOS the discretion to decide the method and process to be used to resolve the complaint, which may include negotiation, conciliation or mediation.

DISPUTE RESOLUTION PROVIDERS

108. There are a number of private organisations and individuals who offer specialist dispute resolution services in New Zealand.

(a) **Fairway Resolution Limited**

One such organisation is Fairway Resolution Limited (**Fairway**) which offers mediation services across a range of disciplines, at varying levels of complexity, such as medical, insurance, building and construction, and family disputes. They provide:

- initial triaging of issues;
- resolution (mediation); and
- if not resolved, they explain where the parties can go next.

As well as providing mediation services to individuals and private employers, Fairway also manages several public dispute resolution systems, including tertiary student disputes; the review system for the Accident Compensation Corporation, and Family Dispute Resolution (a mediation service which is part of the wider Family Justice system provided by the Ministry of Justice). Fairway's services include:

39 Banking Ombudsman Scheme Limited "Terms of Reference" 1 April 2019, clause 1.
40 Banking Ombudsman Scheme Limited "Terms of Reference", clause 24.
41 Insurance & Financial Services Ombudsman Scheme Incorporated "Terms of Reference" 1 July 2015, clause 3.1.

- adjudication;
- conflict coaching;
- customer complaints systems;
- dispute resolution schemes;
- facilitation;
- mediation;
- online dispute resolution; and
- training.

(b) **Crimestoppers**

Another provider is the Honest Bunch Foundation, an independent charity which has a vision of helping Aotearoa be more fair and just for all. The Foundation runs Crimestoppers (which offers anonymous ways for people to pass on information about crime via a 0800 number or online report form).

The Foundation has recently set up Integrity Line, which is a standalone service allowing people to anonymously speak up and submit a report about various Government organisations (including District Health Boards and MBIE).

(c) **Private Mediators**

There are also a number of private, independent mediators (generally lawyers) who are full-time mediators, or mediation is a component of their wider practice. Generally, the rates for a private mediator range between approximately $2,500 to $15,000/day (excluding GST), however these rates can vary based on the level of experience of the mediator, and factors such as the technicality, nature, and value of the dispute at hand. For example, the New Zealand Dispute Resolution Centre's Mediation Rules require a daily preliminary payment between $8,500 and $11,500 (based on the dispute's value and up to eight hours per day), and provide an hourly rate for any additional time over and above eight hours on any day.[42]

BUILDING DISPUTES

109. The Building Disputes Tribunal was set up under the Construction Contracts Act 2002 to cover disputes, including those relating to payments, invoicing, and breach of contract. There is an option for mediation (with a fee) through MBIE, or adjudication of the matter with the Disputes Tribunal.

110. Leaky homes issues are dealt with by the Weathertight Homes Tribunal or Resolution Service.

111. MBIE can make legally binding determinations under the Building Act 2004 about building work.[43] The determination process involves an initial triaging system to decide whether the application is appropriate for determination, a draft determination issued to the parties, and then a final determination issued once the parties have had the chance to comment on the draft determination. Parties can appeal the determination in the District Court on matters

42 New Zealand Dispute Resolution Centre "Mediation Rules – 2018 Revision" 2018, Appendix 1.
43 Building Act 2004, section 188(2).

of substance,[44] and can apply for judicial review of the determination-making process in the High Court.

112. MBIE also provides services for resolving complaints about a building consent authority (**BCA**). In the first instance parties are encouraged to resolve the disputes themselves, but where the dispute cannot be resolved, MBIE provides a formal complaint process whereby parties submit a complaint application and supporting information, and MBIE investigates the complaint.

113. Similar to the determination process, MBIE has an initial triaging process which provides it with the opportunity to decline complaints in certain circumstances.[45] The formal investigation process may involve submissions from, and interviews with the complainant and the BCA, and the issue of a draft decision for the parties to comment on before issuing a final decision. Where complaints are upheld MBIE has the discretion to provide guidance and advice to the BCA, monitor and review the BCA, or take disciplinary action against the BCA.[46]

44 Building Act 2004, section 208.
45 Building Act 2004, section 200.
46 Building Act 2004, section 203.

Section 6: Context In Other Jurisdictions

AUSTRALIA

Background

114. The Review of Australia's Sports Integrity Arrangements (chaired by Hon James Wood, the former Royal Commissioner into Police Corruption) was released in August 2018 (**Review**). The Review was undertaken as part of the Government's efforts to develop its Sport 2030 – National Sport Plan. The Review made 52 recommendations, including in the following areas:

(a) Manipulation of sporting competition;

(b) Anti-doping; and

(c) Management of integrity matters.

115. The Review recommended the establishment of a National Sports Integrity Commission (**NSIC**). The NSIC was intended to assume some of the functions being performed by National Integrity of Sport Unit (**NISU**) and the Australian Sports Commission (**ASC**), with the focus on three primary areas:

(a) Monitoring, intelligence and investigations with respect to possible anti-doping rule violations and manipulation of sports competitions and corruption. This would see a Joint Intelligence and Investigations Unit be established with dedicated State and Territory representatives.

(b) Policy and programme delivery, including education development assistance to sports in implementing policies and appropriate practices in responding to possible integrity breaches. The NSIC would be a single point of contact for athletes, sporting organisations and provide direct assistance to small and emerging sports in Australia that lack capacity to deal with integrity issues.

(c) Regulation of sports wagering and integrity issues, including oversight on implementation and adherence to policies. This would require the NSIC to work with State regulators and wagering service providers, and be authorised to collect and use "*sensitive information*" as captured under the Privacy Act 1988 (Cth).

116. The Review further stated that the purpose of the NSIC would be to have a centrally coordinated response to sports integrity issues in order to overcome the difficulties in securing a coordinated response with the difference in Federal and State regulatory and criminal law.

117. On 12 February 2019 the Federal Minister for Sport released the Government's Response to the Review and indicated that:

(a) Sports Integrity Australia (**SIA**) would be established as the national sports integrity commission; and

(b) a National Sports Tribunal (**NST**) would be established to determine sports disputes (including anti-doping matters).

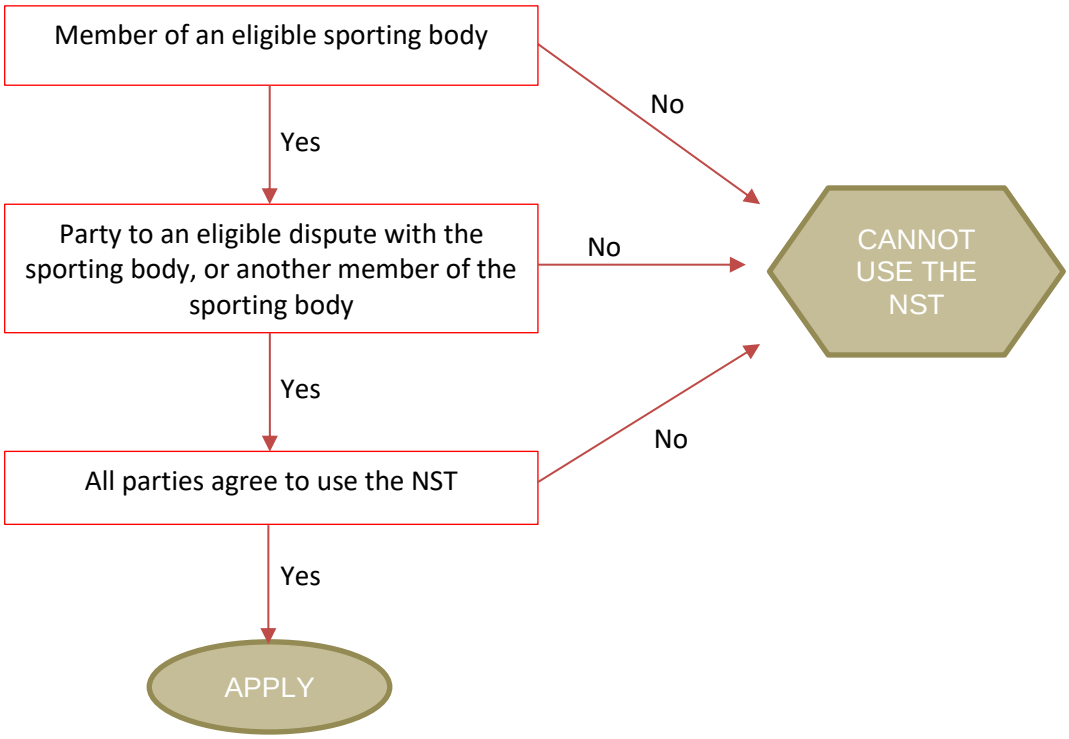
NST: How does it work?

118. In September 2019 the Australian Federal Government introduced the National Sports Tribunal Act 2019, to provide for dispute resolution services. All provisions came into force on 19 March 2020.

119. The National Sports Tribunal Act 2019 established the NST (for a two year pilot period), which has an anti-doping division, a general division, and an appeals division. Members of the NST (numbering 144 as at mid-April 2020) are appointed by the Minister.

120. Anti-doping rule violations will be dealt with by the anti-doping division. Disciplinary matters, selection and eligibility matters, and other (CEO approved) disputes can be handled by either the general or appeals divisions, as applicable, and bullying, harassment and discrimination matters by only the general division. Anti-doping violations will be dealt with by arbitration, whereas the other disputes may be resolved by some or all of arbitration, case appraisal, mediation or conciliation. There is no jurisdiction to award damages, or to deal with contractual or remuneration issues. Similarly, it is not the role of the NST to resolve disputes stemming from what has occurred 'in the field of play'.

121. An applicant can apply for arbitration or mediation at the application stage. Individuals are eligible if they meet the following criteria:



122. Eligible sporting bodies are Australian NSOs, a sporting organisation recognised by the relevant International Sporting Federation as responsible for administering the sport in Australia, or a sporting organisation listed in the NST Sporting Bodies Instrument. Sports below the national level are only entitled to utilise the services of the NST if the dispute arises under the rules of the national-level sporting body, and that body agrees to refer the dispute to the NST and be a party to the dispute. It is our understanding that the NST does not provide its services to recreational organisations. Currently, the legislative framework refers to sporting bodies and includes no references to recreational organisations.

123. If parties do not agree to use the NST (except in the case of anti-doping disputes), they will not be able to access the services available. In that case, the complainant could choose to revert back to the internal dispute resolution process of the relevant organisation (if there is one), or take their complaint through an alternative avenue, as discussed below in paragraph 127(d).

124. It is for the applicant to state a preference for the type of assistance sought from the NST.

125. Fees for the pilot period are intended to be affordable, with a mediation, conciliation or case appraisal having a filing fee of $750.00, with no additional service fee, provided the matter is not complex and does not last longer than one day. Written opinions can be obtained from members at a cost of $500.00. Arbitration filing fees are similarly $500.00, with service fees to be negotiated at the preliminary conference. Appeals are intended to be more expensive in terms of filing fees.

126. Following the result at arbitration or mediation, the parties may appeal to the appeals division (from either the anti-doping division or general division). In some circumstances, an applicant can appeal straight to the appeals division from a sporting body's decision.

127. We interviewed Jonathan Bray (Deputy CEO, National Sports Tribunal), and Anne-Marie Phippard (who at that time was a senior integrity consultant with Sport Australia) as part of this Study, for their insights into the establishment of the NST for a two year trial period. They advised:

(a) The dispute tribunal model adopted by the NST is modelled in part on the mediation services offered within New Zealand's employment jurisdiction.

(b) The guiding principle of the NST is to operate with limited formality, to keep costs down and to enable wholesale access to the services being offered.

(c) The pilot period is meant to encourage an ongoing cycle of review, so that procedures can be modified to meet the needs of users as required.

(d) NST is not compulsory. It is an 'opt-in process', other than for anti-doping concerns. Selection disputes come within the scope of the general division, and therefore parties must opt-in. The NST can only provide a remedy that is agreed between the parties. This is consistent with mediations in New Zealand – if there is no consensus at the conclusion of the mediation, the matter has not been resolved and it is for the parties (or one of them) to then take more formal action such as proceeding to arbitration at the NST. Alternatively, and depending on the

nature of the dispute, the dissatisfied party may take the complaint to another body such as the Australian Human Rights Commission, the Office of the Australian Information Commissioner, or the Fair Work Commission.

(e) The NST will not be exercising a judicial power – the Act which established it only provides for dispute resolution services. It will, to the extent possible, work within the timeframes that govern the complaints handling procedures in the various codes, even if these vary from code to code. Where the procedures are unworkable or difficult to use in practice, it is open to the NST to help the codes upgrade these procedures.

(f) The success or failure of the NST pilot scheme will depend on it getting 'buy-in' from the various sporting codes. If the codes do not advocate use of the NST scheme by members to assist in dispute resolution, it will not succeed.

(g) The legislative framework that establishes the NST is flexible. The different sporting codes can write a referral framework into their existing rules, but are able to utilise the services of the NST even without such a framework.

(h) The various players' unions in Australia are apparently supportive of the new scheme, but will consider it on a case by case basis, and were interested to see how the services of the NST are utilised in the first instance.

CANADA

Background

128. In January 2000, the Canadian Secretary of State (Amateur Sport) created a Work Group charged with developing a model for alternative dispute resolution (**ADR**) that could be applied to the amateur sport community on a national level. The Work Group issued its report in May 2000 (**Amateur Sport Work Group Report**), advising that a three pronged approach was required:

(a) Prevention – the Work Group recommended that legislation should require all National Sport Bodies to adopt a separate and overarching policy that provides a level of appeal of internal decisions, access to mediation services and access to arbitration. The Work Group recommended that a Policy Resource Centre be established to assist organisations in meeting those expectations.

(b) A national ADR program – the Work Group recommended that the federal government should initiate the process of creating a fully funded mandatory national programme governed by a newly established Council for ADR in Sport (in order to maintain credibility and independence from any existing sport body); and

(c) Monitoring – the Work Group recommended that a new role for an Ombudsman for Amateur Sport be created to act as the watchdog for the sport community. [47]

47 Work Group to the Secretary of State "A Win-Win Solution – Creating a National Alternate Dispute Resolution System for Amateur Sport in Canada", 2000.

129. The Physical Activity and Sport Act 2003 established the Sport Dispute Resolution Centre of Canada (**SDRCC**) as an independent organisation funded by the Government of Canada, through Sport Canada, a branch of the Federal Department of Canadian Heritage.

130. The Canadian Minister of Science and Sport appoints the Board of Directors of the SDRCC who have the mandate to direct and oversee the SDRCC's activities. The Board comprises a minimum of three athletes, a coach, a representative of a National Sport Organisation and a representative of a Major Games Organisation. The SDRCC administers the Canadian Sport Dispute Resolution Code (**Code**) which outlines the procedural rules under which disputes are to be submitted to the SDRCC.[48]

131. The SDRCC operates three tribunals:

(a) The Ordinary Tribunal, which deals with any dispute that is not a doping dispute or a doping appeal;

(b) The Doping Tribunal, which hears cases where a person is asserted to having committed a doping rule violation by Canada's anti-doping agency; and

(c) The Doping Appeal Tribunal, which hears appeals of the Doping Tribunal decisions when an athlete is not an international level athlete, as defined by the World Anti-Doping Agency.

132. The SDRCC also operates a resource centre that helps NSOs strengthen their internal dispute resolution structures and to inform sporting communities on sport-related legal developments.

133. As a condition of funding, Sport Canada's funding policies require that NSOs make the dispute resolution services of the SDRCC available to its members once the internal dispute resolution procedures have been exhausted. With the exception of a small administration cost for some services, the SDRCC's services are otherwise free to NSOs that are funded by Sport Canada. Sport Canada provides the main source of funding for the day-to-day operations. The SDRCC also receives small contributions from the Canadian Olympic Committee and other independent revenue sources.

134. In its 2018/2019 Annual Report, the SDRCC reported that it handles over 47 cases per year.[49] This seems to be a relatively small number of cases, considering the number of sports and athletes in Canada. However, we are not aware of the reasons for this. A breakdown of cases handled since the SDRCC began operating is as follows:

48 Sport Dispute Resolution Centre of Canada "Canadian Sport Dispute Resolution Code", 2015.
49 Sport Dispute Resolution Centre of Canada "Annual Report 2018/2019", 2019, page 2.

Year	Number of disputes	Anti-Doping	Selection & Eligibility	Carding	Discipline	Harassment	Governance	Membership	Doping Appeal	Other
2005	51	25	23	1	2					
2006	30	16	5	1	4					4
2007	38	22	7	5	2					2
2008	38	22	12	3						1
2009	47	16	17	6	2					6
2010	38	22	10	3	1		1			1
2011	57	30	11	12	1		1			2
2012	47	27	8	6	2		1			3
2013	49	19	16	8	1		2			3
2014	41	13	17	4					2	5
2015	46	12	14	3	4	2	2	2	3	4
2016	61	23	22	6	5		1	1		3
2017	49	19	17	6	2		2			3
2018	67	29	21	8	2			2	5	
2019	61	20	19	6	5	3	3	1	2	2
Total	**720**	**315**	**219**	**78**	**33**	**5**	**13**	**6**	**12**	**39**

Services offered by the SDRCC

135. The SDRCC maintains a roster panel of top-tier, experienced Canadian mediators and arbitrators who also have experience and expertise in sports and sports law. The SDRCC offers the following dispute resolution services:[50]

(a) Mediation;

(b) Arbitration;

(c) A mediation/arbitration hybrid – a process where parties try to reach settlement through mediation in the first instance, and if issues are not resolved then the mediator becomes the arbitrator; and

(d) Resolution facilitation – a process where a neutral "*process manager*" tries to help the parties to better communicate with each other and to resolve their dispute through an amicable settlement. It is designed to be a simple, informal process that focuses on the communication of the parties and is available to the parties at all times of the dispute resolution process.

136. The SDRCC has shifted its focus in recent years to increased attention on 'safe sport matters'. This has involved the establishment of the following:[51]

(a) A national toll-free helpline, introduced in March 2019 to offer assistance to victims or witnesses of harassment, abuse or discrimination, and is run in partnership with the Canadian Centre for Mental Health in Sport; and

(b) An investigations unit, established as a pilot project until March 2020 to offer a list of qualified and independent investigators to assist NSOs in handling complaints and allegations. The services of the investigation unit were offered to all federally-

50 Sport Dispute Resolution Centre of Canada "Dispute Resolution Secretariat (Tribunal)", SRDCC <crdsc-sdrcc.ca>.
51 Sport Dispute Resolution Centre of Canada "Canadian Sport Dispute Resolution Code", 2015, article 3.1(a).

funded sport organisations in Canada to investigate harassment and abuse allegations on a fee for service basis.

137. The 'Sport Law Connect Program' for British Columbia was also established in 2019 to increase access for the provincial sport community to qualified dispute resolution resources. The Programme provides access to law students, mediators and arbitrators who have volunteered to facilitate informal resolutions or to act as chairpersons for disciplinary or appeal procedures. The SDRCC is considering expanding the programme to other provinces.[52]

138. The SDRCC has decided to focus on these initiatives instead of creating a Sports Ombudsman (as was recommended by the Work Group in the Amateur Sport Work Group Report).

SDRCC: How does it work?

139. A dispute resolution procedure can be initiated by filling in a form on the SDRCC website if a party has exhausted its internal dispute resolution mechanisms. Article 3.1(b) of the Code provides that these are exhausted when a party has filed a notice of appeal and:

(a) The NSO has rejected the right of the person to an internal appeal;

(b) The NSO or its internal appeal panel has rendered a final decision; or

(c) The NSO has failed to apply its internal appeal policy within reasonable time limits.[53]

When not governed by these provisions, jurisdiction can only be obtained by consent of the parties or through another authority which is binding on the parties, such as an arbitration clause or policy.

140. Once the Dispute Resolution Secretariat (**Secretariat**) receives an admissible request, six steps are taken in the dispute resolution process:

(a) **Step 1: Case Management by the Secretariat** – a case file will be opened in the Case Management Portal and the Secretariat will issue correspondence to all parties with instructions for next steps.

(b) **Step 2: Administrative Meeting** – the Secretariat will convene parties to a conference call to discuss the administrative process to be followed to resolve the dispute, and answer questions from the parties.

(c) **Step 3: Resolution Facilitation** (mandatory only in arbitration cases) – other than in exceptional circumstances, parties requesting an arbitration hearing have to participate in an informal resolution facilitation session prior to any hearing. SDRCC says the purpose is to avoid, if possible, having to participate in an arbitration hearing. The meeting allows the parties to express their understanding of the conflict, clarify the issues and to explore possible paths towards resolution.

52 Sport Dispute Resolution Centre of Canada "Annual Report 2018/2019", 2019, page 3.
53 Sport Dispute Resolution Centre of Canada "Canadian Sport Dispute Resolution Code", 2015, article 3.1(b)(ii).

(d) **Step 4: Preliminary Meeting** – the mediator and/or arbitrator will convene parties to a conference call to discuss procedural aspects of the dispute resolution process, address any preliminary issues and answer questions from the parties.

(e) **Step 5: Mediation session and/or arbitration hearing** – the parties meet with the mediator/arbitrator. Each party presents its position and discusses contentious issues.

- If mediation – the mediator seeks to guide them toward a mutually satisfactory solution**.** The mediators have no authority to impose a settlement or any other solution to the dispute. If mediation fails to yield a mutually agreed upon settlement, parties may opt to submit their dispute to arbitration for a final and binding award.

- If arbitration – the arbitrator hears the evidence (including witnesses, if any) and arguments. The arbitrator asks questions to gain a full understanding of all the issues underlying the dispute.

(f) **Step 6: Agreement or decision** – if a settlement is reached during mediation, the mediator can assist parties in putting in writing any agreement reached and signing it. After an arbitration hearing, the arbitrator will write a reasoned decision that will be final and binding upon the parties. If a party fails to comply with the agreement or decision, the injured party can go through the court system to make the offending party comply.

141. Mediations and resolution facilitations are usually conducted by phone conference with the facilitator using an online virtual mediation tool that allows for management of party conversations and caucuses (including virtual caucus rooms).

142. Arbitrations are usually heard by a single arbitrator, with the exception of the Doping Appeal Tribunal where a panel of three arbitrators is required. The Code also allows for a panel of three arbitrators in non-doping cases to be appointed when justified by the complexity of the case.

143. Legal representation in the SDRCC is not mandatory. Parties have the right to be represented or accompanied by a person of their choosing. For those wanting legal representation but who are unable to afford it, the SDRCC makes a list of pro bono lawyers available.

144. The resolution facilitation services are free to sports organisations that receive federal funding under the Sport Support Program of Sport Canada. In order to request mediation, mediation/arbitration or arbitration services, a non-reimbursable filing fee of CA$500 is required. This cost is borne by the person or organization filing the request, unless it is otherwise agreed by parties to share the cost. All other costs related to the process are covered by the Dispute Resolution Secretariat, including telephone and mailing costs, arbitrator/mediator fees and expenses, secretariat personnel salaries, as well as, if required, the rental of facilities and translation/interpretation services.

145. Organisations that do not receive this funding can also use the SDRCC. For these organisations, all costs related to the dispute resolution process are charged to the parties. The SDRCC website says that, on average, those costs amount to just over CA$6,000 per case, but they can range anywhere from CA$2,000 to CA$20,000.

146. The agreement to use the Secretariat services of the SDRCC must specify which parties will be responsible for the costs. Under certain circumstances, the arbitrator has the authority to compel a party to reimburse fees and expenses incurred by another party.

Recent Review into Maltreatment in Sport in Canada

147. In December 2019, the Canadian government (under the 'Canadian Safe Sport Programme') set up the Universal Code of Conduct to Prevent and Address Maltreatment in Sport Leadership Group (**UCCMS**). UCCMS is comprised of athletes and representatives from NSOs, multi-sport service organisations, and the Canadian Olympic and Paralympic Sport Institute Network.

148. In July 2020, UCCMS announced the appointment of McLaren Global Sport Solutions to analyse safe sport models in Canada and to develop a mechanism to protect participants in sport and to develop a national code of conduct to prevent maltreatment in sport in Canada.

149. In relation to the appointment, Professor McLaren stated:

"*The athletes need to have confidence in the system and they need to be sure there isn't any retaliation against them … that's part of why self-regulation doesn't work. There's too many ways in which the sport can retaliate that can have long lasting physical and psychological effects*".[54]

UNITED KINGDOM

Background

150. The United Kingdom Government has to date adopted a non-interventionist approach to sport, and the regulation of individual sports is largely left to their national governing bodies (**NGBs**), with the Government only intervening where it is deemed to be in the public interest to do so.

151. A regulatory or disciplinary offence by a participant will usually fall to be determined by a disciplinary committee (or similar body) pursuant to the relevant NGB's rules. Where a dispute falls outside this sphere and is akin to disputes of a civil nature (such as breach of contract claims), the majority of NGBs require participants to resolve disputes by way of arbitration.

[54] The London Free Press "Renowned London anti-doping crusader turns sights to mistreatment of athletes", 28 July 2020 <lfpress.com>.

152. In relation to grassroots issues, individual players and supporters are encouraged in most sporting disciplines to approach the coach or club official in the first instance (club welfare officer) to resolve a dispute (this is referred to as "*frontline resolution*").

153. A minor dispute may be handled with a short informal response if appropriate. A serious complaint should be handled through a thorough investigation by the club. All complaint avenues at local level should be exhausted prior to a complaints appeal to the NGB.

154. However, where a serious complaint is raised it may be necessary in the first instance for a direct escalation of the complaint to the NGB. A thorough investigation would then be carried out by the NGB, and a final response issued.

155. If the complainant is still not satisfied with the outcome, it is possible for a review of the decision to be made by the NGB. Alternatively, where available, the complainant may be directed to another body that can address the complaint such as the Independent Football Ombudsman (IFO).

156. Following a review, if the complainant is still dissatisfied and the NGB still stands by its final response, then the dispute can be referred to independent arbitration. In some circumstances, Sport England may be able to consider complaints about a NGB, a sport discipline or organisations that they fund.

Sport Resolutions UK: How does it work?

157. The Sport Dispute Resolution Panel Limited (**Sport Resolutions UK**) is a not-for-profit independent dispute resolution service that offers a number of different services to assist in the resolution of disputes in sport. It is a private service which is partly funded by its service level agreements with NGBs, mediation and arbitration fees, and by UK Sport to provide services to organisations in the Olympic and Paralympic high performance sport system, such as the United Kingdom National Anti-Doping Panel.

158. The services offered by Sport Resolutions UK include:

(a) Mediation;

(b) Arbitration;

(c) Investigation and independent review services; and

(d) Operation of the National Anti-Doping Panel and the National Safeguarding Panel.

159. Sport Resolutions UK is open to sports disputes at all levels, from Olympic-level through to recreational and grassroots sports. However, the use of Sport Resolutions UK's services is limited to where it has jurisdiction or the consent of parties to provide services. This could occur specifically through the inclusion of a referral clause in a relevant rule, regulation or contract, or by obtaining the consent of parties to a dispute (for which Sport Resolutions UK provides template forms of both mediation and arbitration agreements).

160. While the services are open to sporting disputes of all levels, we note that Sport Resolutions UK is focused on resolving disputes at a national and high performance level, which have included the FA Independent Child Sex Abuse Review, doping disputes involving elite athletes, and various disputes involving the English Football League and Football Association.[55]

161. We consider that the fee-based services offered by Sport Resolutions UK may provide a barrier to entry to disputes at a lower level, and involving low profile, low resourced organisations and individuals. For example, Sport Resolutions UK states the total cost of a mediation as ranging between £1,000 to £6,000, split equally between the parties.

162. Sport Resolutions UK operates a three tiered structure, which consist of a Management Board and Board of Directors whose purpose is to set the organisations values, strategic direction, and provide effective leadership to the organisation. The services offered by Sport Resolutions UK are provided by a number of different panels (such as the Panel of Mediators and Panel of Arbitrators), and appointments to these panels are made in accordance with a set of general selection criteria, and a set of specified selection relevant to each particular Panel.[56] The day to day management of the service is provided by a full time Secretariat.

163. With regard to its dedicated mediation service, the mediation process is guided by the Sport Resolutions (UK) Mediation Procedure (**Mediation Procedure**). The Mediation Procedure provides the mediator agreed on by the parties (or where there is no agreement between the parties, the mediator appointed by the Executive Director of Sport Resolutions UK), with a wide discretion to determine the procedure.

164. The Mediation Procedure notes that the "*process is flexible and determined by the Mediator in consultation with the Parties and normally comprises a series of confidential joint and private meetings*".[57] Sport Resolutions UK, in conjunction with the mediator appointed, will then make necessary arrangements with the parties, including drafting the mediation agreement, organising document exchange, meeting with the parties and their representatives, and other general administration.[58]

165. If there is no consensus at the conclusion of the mediation, then a party can revert to other options. These options include going back to the internal dispute resolution process of the NGB (or other relevant sporting organisation), proceeding to arbitration (which is provided by Sport Resolutions UK), or taking the complaint to another body such as the Equality and Human Rights Commission, Information Commissioner's Office, or the Employment Tribunal. The Mediation Procedure notes that the referral of a dispute to mediation "*does not affect any rights that may exist under Article 6 of the European Convention on Human Rights. If the dispute is not settled by mediation, the Parties' rights to a fair trial are unaffected*".[59]

55 Sport Resolutions United Kingdom "Annual Report 2018/2019", 2019 pages 12-19.
56 Sport Resolutions United Kingdom "Applying for Membership of Sport Resolutions (UK) National Panel of Arbitrators and Mediators – Selection Criteria", 2018.
57 Sport Resolutions United Kingdom "Sport Resolutions (UK) Mediation Procedure", 2018, at clause 1.1.
58 Sport Resolutions United Kingdom "Sport Resolutions (UK) Mediation Procedure ", 2018, at clause 4.1.
59 Sport Resolutions United Kingdom "Sport Resolutions (UK) Mediation Procedure", 2018, at clause 9.1

ANALYSIS OF THE THREE JURISDICTIONS

166. An assessment of the CMDRS at a national sports level in Australia, Canada and the United Kingdom (**Jurisdictions**), indicates:

(a) There are varying approaches as to when complainants are able to use the respective CMDRS' services. In Canada for example, parties who wish to use the national SDRCC can access it only once they have exhausted the internal dispute resolution mechanism with the NSO. Conversely, there is no requirement to exhaust internal dispute resolution options to access Australia's NST, or Sport Resolutions UK in the United Kingdom.

(b) As a baseline, engagement in services offered by the CMDRS in the Jurisdictions must be by agreement between the disputing parties (except in limited circumstances, such as doping disputes), whether that be through the submission of a mediation agreement or consent form, or through another authority like a mediation or arbitration clause as part of an NSO's internal complaints policy.

(c) Some of the Jurisdictions also have moderate barriers to entry in order to access their respective CMDRS. For example, the NST in Australia is only available to eligible sporting bodies and individuals who are members of those eligible sporting bodies. Similarly, while Sport Resolutions UK promotes itself as being available to sports disputes at all levels, the fees payable for its services may present a barrier to entry for Participants at lower levels. The disputes and investigations that Sport Resolutions UK addresses are notably at a high performance and national level, so it is unclear whether it effectively addresses grassroots level disputes.

(d) There is a consistent approach regarding the services offered by each CMDRS in the Jurisdictions. Each of the CMDRS offer mediation and arbitration services as part of a wider spectrum of services. For example, Sport Resolutions UK and the SDRCC (through a dedicated investigations unit as part of a pilot programme) offer investigation services. This wider approach to dispute resolution services could be encompassed by any new CMDRS implemented in New Zealand.

(e) The CMDRS in the Jurisdictions also take differing approaches in relation to the payment of fees for the use of dispute resolution services. In the United Kingdom, the parties share the costs of mediation services provided by Sport Resolutions UK equally. In comparison, the NST and SDRCC require relatively modest filing fees to be paid by the person or organisation filing the request, but the CMDRS will cover most of the other costs related to the process. It is important to note that in Canada, NSOs are required (as a condition of funding of Sport Canada's Sport Support Program) to make the dispute resolution services of the SDRCC available to its members once internal dispute resolution procedures have been exhausted. NSOs who do not receive this funding, are able to use the SDRCC's services, but those parties must bear all the costs of the dispute resolution process, in a manner similar to Sport Resolutions UK.

167. Following this cross-jurisdictional analysis, there are aspects of the CMDRS of each of the Jurisdictions which would be appropriate, and which could form part of any new CMDRS system in New Zealand. However, it is clear that the systems in these Jurisdictions are still very much a 'work in progress'. For example, despite all of the recent reforms in dispute resolution services for sport in Canada, a further review is being undertaken. As Professor McLaren said in relation to the Canadian government's 2020 review to consider a national code of conduct to prevent maltreatment in sport in Canada: "*there's a huge momentum swing and athletes and sports organisations all say the community wants this".*[60]

INTERNATIONAL INTERGOVERNMENTAL ORGANISATIONS

168. Since 2015 there have been a series of commitments from leading international intergovernmental organisations in relation to human rights in sport. There are three essential elements to these commitments:

- It is a minimum requirement that the integrity of sport must now be grounded in respect for the internationally recognised human rights of players;
- Government and sports bodies need to invest in the personal development, education and wellbeing of athletes; and
- The recognition, scope and effectiveness of collective bargaining in professional sports must be respected, and not encroached upon by the government.

169. Recent initiatives from various international organisations include:

(a) The United Nations Educational, Scientific and Cultural Organization has developed key policies areas such as "protecting the integrity of sport" which require that governments ensure:

> "*the fundamental human rights of everyone affected by or involved in the delivery of physical education, physical activity and sport must be protected, respected and fulfilled in accordance with the United Nations Guiding Principles on Business and Human Rights*" (**UNGPs**).[61]

(b) The Council of Europe is leading efforts to implement the Kazan Action Plan and a working group has drafted guidelines for governments that include a proposal for a definition of integrity that:

> *"…sport integrity encompasses the components of personal, organisational and competition integrity, and thus shall reject competition manipulation, discrimination, cheating, violence, abuse, corruption and any other crime or fraud related to sport; promote transparency and accountability in the governance of sport; and foster respect for internationally recognised human rights*".[62]

60 The London Free Press "Renowned London anti-doping crusader turns sights to mistreatment of athletes", 28 July 2020 <lfpress.com>.
61 United Nations Educational, Scientific and Cultural Organization "Kazan Action Plan", 2017, Annex 1.
62 Council of Europe "Guidelines on Sport Integrity – Action 3 of Kazan Action Plan", 2020, page 13.

(c) The Centre for Sport and Human Rights (**Centre**) was established in June 2018 and is working to ensure a world of sport that fully respects human rights. It relevantly comprises groups from employer representatives, governments, intergovernmental agencies, brands, broadcasters and affected groups (including the player and trade union movement). The Centre's Sporting Chance Principles provide:

> *"the governance and delivery of sport should at all times be based on international human rights instruments, principles and standards, including those expressed in the UN Guiding Principles on Business and Human Rights, the ILO Declaration on Fundamental Principles and Rights at Work, and the ILO Tripartite Declaration on Principles Concerning Multinational Enterprises and Social Policy".*[63]

(d) The International Labour Organisation (**ILO**) Global Dialogue Forum on Decent Work in the World of Sport, in January 2020, identified integrity-related issues and the lack of access to effective remedies as specific challenges facing athletes. The proposed recommendations to address such challenges included governments, employers' and workers' organisations and other relevant stakeholders promoting the principles set out in the UNGPs and the Centre's Sporting Chance Principles on Sport and Human Rights. New Zealand is a founding member of the ILO and party to all core ILO Conventions.

At the Commonwealth Sports Ministers Forum held (virtually) on July 23 2020, a Forum Statement was agreed – relevant excerpts are as follows: [64]

"Sport and good governance, human rights and integrity in the new normal

…

10. Recognising the potential of the pandemic to negatively impact the progress made thus far with regard to promoting gender equality, non-discrimination, enhancing accessibility and inclusion, safeguarding athletes and participants, and protecting the integrity of sport, Ministers reiterated that collective action alongside the Commonwealth Sport Movement to promote good governance, achieve gender equality, prevent and address corruption, protect the integrity of sport, safeguard participants and promote human rights and inclusion in sport was essential to maximise the positive impact of the sector.

11. Ministers welcomed the progress on the Commonwealth Consensus Statement on Promoting Human Rights in and through Sport, noted the coherence with the central pillar of the Sustainable Development Goals to 'leave no one behind' and supported the points of consensus on:

- *zero tolerance for violence, harassment, abuse or discrimination, with a particular focus on children and groups in a situation of vulnerability*
- *achieving gender equality;*

63 Centre for Sports and Human Rights "Sporting Chance Principles, 2018, principle 2.
64 The Commonwealth "Commonwealth Ministerial Forum on Sport and COVID-19, Forum Statement", 2020.

- *advocating for access to sport, physical education and physical activity for all; and*
- *fighting arbitrariness and other abuses in sport.*

12. Recognising the need to promote and protect all human rights in sports to intensify the fight against racism, discrimination violence, exploitation, abuse and harassment, Ministers strongly reiterated their condemnation of all forms of racism and discrimination and highlighted the importance of concerted and joined up action by governments, sporting organisations and civil society, in and through sport, to confront this systemic and structural issue. Ministers committed to amplify language condemning all forms of racism and discrimination in the Commonwealth Consensus Statement on Promoting Human Rights in and through Sport and finalise the Consensus Statement through online means following the Forum."

170. The above commitments create obligations for governments in relation to their duty to protect human rights, and are also being implemented by sport governing bodies who have a separate duty to respect human rights under the UNGPs.

171. Consistent with fulfilling these respective duties, governments must enable rather than constrain respect for human rights in the development of sport policy, and require that as minimum standards sports organisations:

(a) Make a policy commitment to respect human rights;

(b) Undertake ongoing human rights due diligence to identify salient risks - actual and potential adverse human rights risks linked to its operations;

(c) Enable access to effective remedies where there are adverse human rights impacts as a result of activities; and

(d) Develop processes for stakeholder engagement.

172. Accordingly, any national CMDRS should align with international human rights and integrity obligations.

Section 7: Recommended Options For CMDRS For Sport In NZ

INTRODUCTION

173. The terms of reference for this review required us to develop no more than three options for a CMDRS, including:

(a) the structure, governance, powers, scope and procedures for each option;

(b) the advantages and disadvantages of each option;

(c) whether any option should be mandated or optional, and if so, how; and

(d) any reasons why a CMDRS option may not be appropriate for both professional and amateur sports.

174. There are a number of challenges and variables that have been considered, following discussion with relevant stakeholders and research into dispute resolution services in (and outside) sport in New Zealand and globally. Some of the significant issues we have considered include:

(a) whether the newly established CMDRS should be independent, or sit within an existing service or institution such as the Sports Tribunal, Drug Free Sport New Zealand, or MBIE (bearing in mind the constraints on the scope of this review outlined in paragraph 2 above);

(b) how complainants would raise concerns/problems, and the extent of any case management processes;

(c) what level of triaging of complaints would need to occur;

(d) the capability and credibility of any CMDRS; and

(e) the scope and reach of the CMDRS.

175. We received overwhelming support from those interviewed for the establishment of an independent CMDRS for sport. The strong feedback was that mediation services are needed in sport, as a first step. This was recommended by Don MacKinnon (in his 2015 review) and Steve Cottrell (in his 2018 review). Consistent feedback was that many sport and recreation organisations do not have the resources and capability to manage some of the complaints and problems they face. Many sports organisations have large numbers of volunteers and concern was expressed about how the present system places too much responsibility on them to handle complaints without the experience and knowledge to do so.

176. We were told that many sports are struggling with complaints and member protection issues. They are under resourced and not currently managing. Often, complaints are not raised because of a lack of independence (real or perceived) of those who are responsible for dealing with the issues or a concern about potential bias. This prevents Participants who

have concerns from being heard. The introduction of a CMDRS would address concerns around a lack of independence and provide an avenue to pursue concerns when, at the moment, there is often nowhere to go.

177. A number of interviewees expressed their views on the importance of triaging as part of a CMDRS. They want to see a process that allows for resolution at both the lowest level and in a mediation setting.

178. There was much support for early intervention where appropriate, to avoid problems festering and only being escalated after the damage may have become irreparable. A facilitated discussion may, in many circumstances, be sufficient to achieve resolution at the lowest possible level. We were told that too often problems are not being dealt with until they have become almost impossible to resolve.

179. Mediation, operating independently of Sport NZ and the Sports Tribunal, is seen overwhelmingly as a key component of any CMDRS. The view of many stakeholders was that mediation would provide an opportunity for resolution of those problems and disputes that cannot be resolved at an earlier stage. For mediation to be attractive, the consistent feedback was that it needs to be cost effective and resourced with skilled mediators, preferably with a really good understanding of the sport and recreation environment.

RECOMMENDED OPTIONS

180. We set out two recommended options below:

A: Create a Sport & Recreation Mediation Service; and

B: Appoint a Sports Ombudsman.

181. Ideally, we recommend that Option A and Option B are both introduced. We consider there is a need for a government funded Sport & Recreation Mediation Service (**SRMS**) that is operated by, but independent of, Sport NZ.

182. In conjunction with the SRMS, the establishment of a suitably resourced and empowered Sports Ombudsman could enhance the mediation process, and provide other advantages if based on New Zealand's familiar Ombudsman regime. We consider that the combination of Options A and B reflects our research and the consensus of opinions from the large number of interviews that we have conducted.

183. By way of opening comments on the two recommended options, we note the following:

(a) The adoption of a national CMDRS for sport in New Zealand will require buy-in from NSOs/NROs (and players, athletes, and administrators), after being informed through an extensive and comprehensive education process conducted by Sport NZ.

(b) Regardless of the type of CMDRS option implemented by Sport NZ, we recommend that all Participants who have witnessed or experienced Inappropriate Behaviour (not just those at elite level) and who want the opportunity to air their concerns, are able to bring their concerns to the attention of the CMDRS. As there has been an absence of any national dispute resolution process to date for sport and recreation, we recommend that historic complaints of up to a year can be raised during the two-year trial period. However, once the trial period has finished, we recommend that there be a 90-day limitation period within which problems must be raised, similar to the statutory personal grievance period for employment disputes under the Employment Relations Act 2000.

(c) We do not recommend that internal dispute resolution procedures need to have been exhausted before mediation assistance can be sought. For those NSOs/NROs with extensive internal systems, having access to external dispute resolution processes at an early stage is more likely to result in a successful resolution without losing Participants or fostering ill will, as opposed to only permitting mediation once hearing panels, and at times appeal panels, have been convened, and findings released. Smaller and less resourced NSOs/NROs that do not have an internal procedure would be able to utilise mediation services almost from the outset, whereas the more professionally run NSOs/NROs may have policies that require Participants to exhaust internal mechanisms before accessing an external CMDRS. To ensure a sense of consistency, and in order for all Participants to have the same rights of access to mediation, the terms of some NSO/NRO policies, and/or relevant collective agreements may need to be amended (following consultation).

(d) The wide range of existing dispute resolution procedures within NSOs/NROs in New Zealand means that there will be no 'one size fits all' in terms of these NSOs/NROs opting in to any mediation system. Accordingly, we envisage at least two forms of 'procedures' for NSOs/NROs to adopt; one which can 'clip on' to an existing dispute resolution procedure, and one wholly new procedure (perhaps incorporating both the access to the new mediation service system, and an internal disputes policy), which NSOs/NROs that do not have a pre-existing policy, can adopt in its entirety.

(e) The mediation service will need to balance sustainability into the future, with a manageable cost basis, and the need to be appropriately resourced to comprehensively manage incoming complaints (and to manage those complaints where mediation would not be suitable). We recommend adopting a pilot scheme approach in the first instance (for say, two years), to enable Sport NZ to deal flexibly with issues such as resourcing and scope.

(f) The implementation and use of a CMDRS would not affect a complainant's existing avenues to resolve disputes. Their ability to take complaints to the OPC or HRC, or file proceedings in the Employment Relations Authority (for employment related disputes), would be preserved.

OPTION A: SPORT & RECREATION MEDIATION SERVICE

Introduction

184. The SRMS would be an independent national mediation service, to resolve sport related disputes and problems, predominantly through the engagement of a panel of qualified and experienced mediators. There would be an initial triaging service that attempts early resolution and determines how best to manage the complaint (such as referring the complaint back to the relevant NSO/NRO, or channelling the complaint down the appropriate track for resolution). The SRMS' Registrar would then assist the parties and assess the most appropriate option going forward.

Structure and governance

185. The SRMS would be created by Sport NZ, but would be independent of Sport NZ. An operational support structure would be created whereby a dedicated Registrar would manage the day to day running of the SRMS. The Registrar could be employed by Sport NZ, but retain their independence for the SRMS, in the same way that that the Registrar of the Sports Tribunal currently operates. We recommend that the Registrar undertakes sufficient training to be able to properly assess and triage sports problems and disputes.

186. We recommend that the SRMS is run for a two-year trial period, and participation would be voluntary. In Australia, the NST has implemented a two-year pilot programme, and we consider that this approach has merit. This could be promoted as a development/evaluative period, as it means mediators can be retained for a specific period of time, and enables Sport NZ to have a greater degree of flexibility in the implementation of a mediation service than might otherwise be the case. If the establishing documentation was appropriately drafted, it would be possible to ensure Sport NZ could also amend the procedures during the course of the pilot period if there was a need.

187. We consider that an independent SRMS may be established under the express terms of the SNZA. Sport NZ's functions include "*facilitating the resolution of disputes between persons or organisations involved in physical recreation and sport*"[65]. This is a broadly framed function and, on its face, would support Sport NZ establishing the SRMS independent of itself without requiring amendment to the SNZA.

188. Nothing in the SNZA or the Crown Entities Act 2004 appears to prevent Sport NZ doing this. The Crown Entities Act 2004 relevantly affirms that Sport NZ's functions are those set out in the SNZA and that Sport NZ can do anything authorised by the SNZA. The responsible Minister is expressly empowered under the Crown Entities Act 2004 to direct Sport NZ to do this.

189. Conversely, we do not consider that a CMDRS could be established under the SADA without the SADA being amended. While Sport NZ appears to have within its powers, the ability to establish a CMDRS independent of itself, we do not consider that the Sports Tribunal has similar powers.

65 Sport and Recreation New Zealand Act 2002, section 3.

190. While the Minister could direct the Sports Tribunal to establish a CMDRS under the authority of the SADA[66], a direction to establish an independent process for which the Sports Tribunal would be unaccountable for, and independent of, is difficult to reconcile with the Sports Tribunal's obligation of being the independent body charged with hearing, considering, and determining sports-related matters.[67] It is a feature of the statutory language establishing the Sports Tribunal and its functions, that the Sports Tribunal itself is responsible for those obligations.

191. While the Sports Tribunal does provide limited mediation, including by independent persons, this nevertheless requires the lodging of a proceeding with the Sports Tribunal. By requiring the dispute to come within the Sports Tribunal in the first instance, any subsequent CMDRS provided as part of that process, however separate from the Sports Tribunal, would nevertheless lack the independence required and would be inconsistent with 'early intervention'.

192. The operation of the Sports Tribunal or Drug-Free Sport New Zealand would be undisturbed by the implementation of the SRMS, but there would be opportunities for the Sports Tribunal to recommend parties to engage in services provided by the SRMS. Referrals to the SRMS would be a matter for the Sports Tribunal to determine at its own discretion. Conversely, the SRMS would have the ability to refer matters to the Sports Tribunal or Drug-Free Sport New Zealand, but would act independently and would not interfere with the well-established governance structures of those bodies.

Powers and procedures

193. We consider that the services offered by the SRMS panel, could be provided by a third party. One option of a third party who could be engaged to provide the SRMS is Fairway, given Fairway currently provides a variety of dispute resolution services across a range of different industries in New Zealand. Notably, Fairway currently administers and operates the Financial Dispute Resolution Service, the Accident Compensation Corporation's dispute resolution service, and Family Dispute Resolution (as part of the wider system provided by the Ministry of Justice).

194. We also note that the use of an established (and credible) organisation such as Fairway would mean the mediation service could be 'up and running' very quickly, could address the need to balance sustainability into the future, would ensure that the CMDRS is appropriately resourced, and would avoid a number of the set-up costs associated with the establishment and appointment of a new SRMS panel. There would be significant advantages to partnering with a third party that already has existing systems, people, and processes, and could effectively 'lock and drop' them into place. However, before any third party provider is appointed, we recommend Sport NZ undertakes a procurement process.

195. The Registry Office staff and members of the SRMS (whether or not a third party provider is used) should be diverse and encompass different ages, ethnicities, performance levels and experience (particularly in sport) to ensure that the needs of all parties to disputes are being met. A number of interviewees expressed concern about barriers to the use of a mediation service, including the need for the service to be trusted, experienced, independent and cost-

66 Sports Anti-Doping Act 2006, section 38(f)(ii).
67 Sports Anti-Doping Act 2006, section 3(c)(ii).

effective. We also recommend that the policies, procedures and recruitment processes of the SRMS align with the principles of Te Tiriti o Waitangi.

196. The SRMS would enable parties to resolve complaints or disputes in a timely manner, in a way that is private and confidential to the parties involved. We suggest that the SRMS engage a panel of appropriately trained mediators, preferably with relevant experience in sports and sports law. Many of those we spoke to recognised that for the panel, whilst sports experience will be highly desirable, experience as a mediator will be a key qualification. This may include barristers, professional mediators/arbitrators or solicitors as well as individuals from the sports sector, such as ex-athletes and administrators with relevant experience and qualifications.

197. We consider that the use of a third party's panel of dispute resolution specialists to form the basis of the SRMS' panel would address the widely held views of stakeholders regarding the need to have experienced mediators. We recommend (regardless of whether a third party provides the service) that all those involved in the SRMS (including, but not limited to the SRMS' panel of mediators, the Registrar, and Registry Office staff) be provided with additional training and education regarding concepts such as the organisational structure of NSOs/NROs, and the nature of sporting disputes and issues.

198. We recommend that the SRMS offers:

(a) access by way of 0800 number/online form/email;

(b) a triage and early resolution service to determine how to best manage the problem, complaint or dispute when it is received;

(c) a standalone mediation service that would be available to all Participants, even when there was no intention to pursue more formal legal options (such as filing proceedings in the Sports Tribunal);

(d) counselling and facilitated resolution services;

(e) educational resources and information relevant to the settling of disputes and the services offered by the SRMS; and

(f) services to parties in advance of a party filing proceedings in the Sports Tribunal.

199. The specific service offered by the SRMS could be recommended by the Registrar, but should also be accessible voluntarily by complainants. For mediation services and facilitated resolution, the parties to the dispute will need to consent to the process and any mediated settlement will be voluntary. For example, parties to a dispute should be able to engage in mediation if they all consent to it (and provided the problem comes within the scope of the SRMS), even where the Registrar recommends a different means of dispute resolution.

200. Once a complaint is received, the Registry Office would operate a triaging system, in a manner similar to that used by NZR. The triaging process would:

(a) Assess all complaints to decide if the complaint is in scope. This may include a conversation with the complainant to properly understand their issue(s). Where appropriate, the complainant may be directed back to the relevant NSO/NRO, regional organisation, club or other relevant organisation. The Registrar may attempt to facilitate an early resolution, which would include the Registrar contacting the relevant NSO, NRO, regional organisation, club or other relevant organisation. If the matter is not within scope, the Registrar will contact the complainant and advise them of the outcome and their other options, including being directed to another agency such as Drug Free Sport New Zealand, the Sports Tribunal, the OPC, the HRC, or the Police.

(b) Allow standard in-scope complaints to be channelled through the standard track where it is clear that mediation is appropriate.

(c) Allow complaints which raise particularly complex issues, serious allegations, or where the appropriate forum is not self-evident, to be channelled through the advanced track. In this case, the Registrar could engage the assistance of a special advisor (or advisors) to offer preliminary guidance and consider the next steps.

201. The triage system would allow flexibility in the way that complaints and disputes are managed by the Registrar. Not every complaint or dispute requires a formal mediation, and in some cases, the matter may be too inconsequential to go to mediation, or a mediation would be futile. The Registrar would have the power to determine the most appropriate course of action and advise the parties on the process involved to assist them in making a decision on next steps. However, this would not prevent the parties from agreeing to engage in mediation (even where the Registrar did not recommend it as the most appropriate course of action).

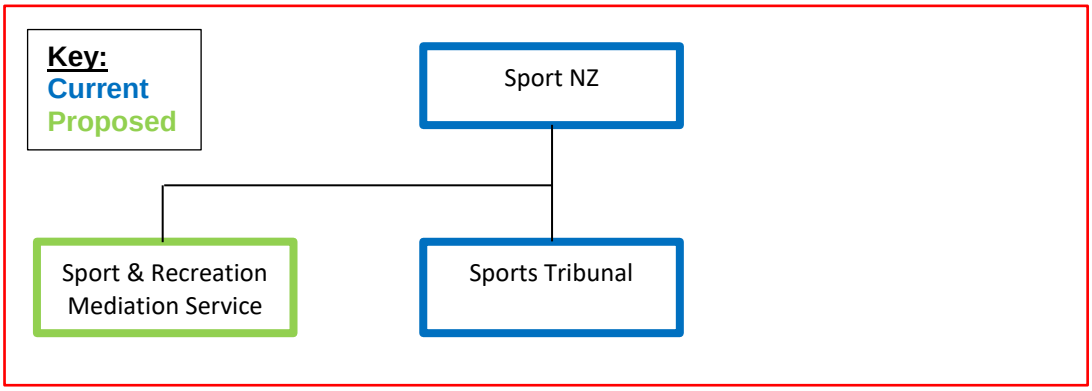
202. We recommend a modest filing fee for mediations is introduced. Stakeholder feedback was somewhat divided on this issue, although the majority favoured a fee. There was recognition that a fee of any level may prevent some Participants from using the service. However, most stakeholders we spoke to felt an entirely free service would encourage too many spurious or vexatious complaints.

203. Any outcome would be communicated to complainants via the Registrar. The Registrar would also follow up with the complainant to ensure that matters have been resolved and no further services are required, or whether there needs to be further referral for unresolved matters. A number of interviewees expressed a concern that 'early intervention' or mediation services would not be successful unless there was follow up on matters that were triaged and referred back to say, a club, to monitor.

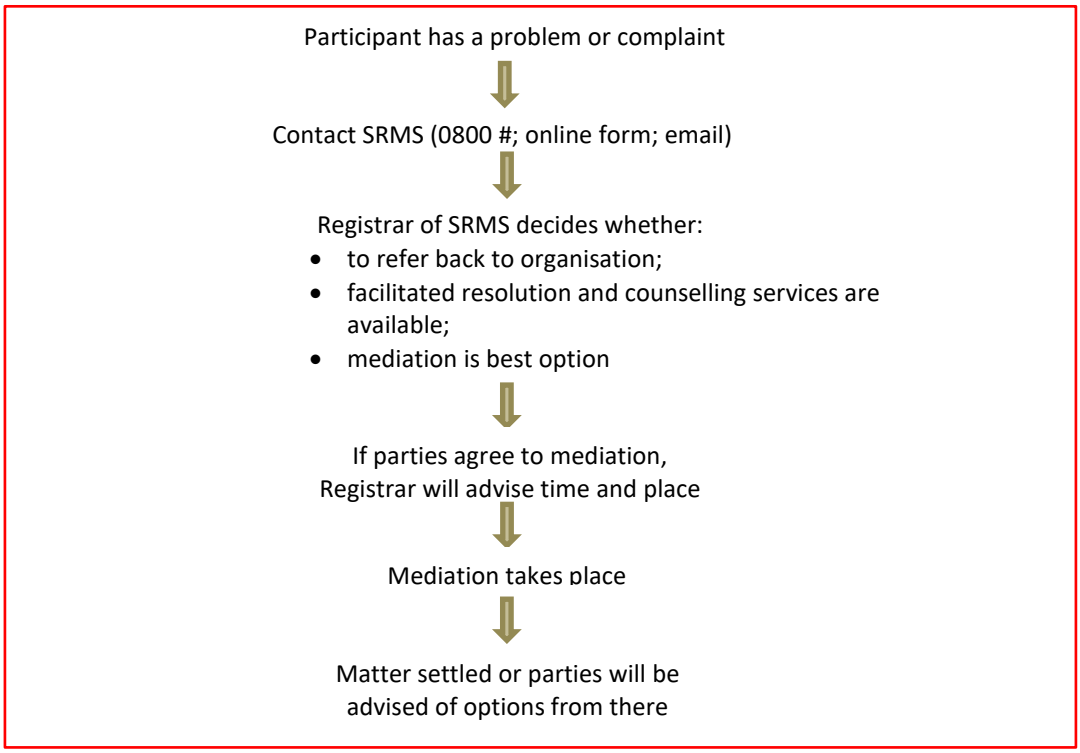
204. If a complainant is dissatisfied with the outcome of mediation and/or the matter is not resolved, then that complainant could refer the matter to the Sports Ombudsman (if this position is created), or revert to engaging with the internal dispute resolution system of the relevant NSO/NRO, club or other relevant organisation (if there is one). Alternatively, and depending on the nature of the complaint, the complainant could utilise its other avenues of dispute resolution (which remain available), such as the OPC, HRC, Employment Relations Authority, or filing proceedings in the Sports Tribunal.

205. The proposed structure and process for the SRMS is set out below:

(a) **Proposed Structure**



(b) **Complaints Process**



Scope

206. Any Participant in sport in New Zealand or any other party to a sports dispute, from grassroots/community involvement to elite level, should be able to access the SRMS. This should be regardless of whether the NSO/NRO has 'opted-in' or not (although we recognise that buy-in from the NSOs/NROs is important). The aim would be to resolve problems in

sport, particularly in relation to Inappropriate Behaviour (outside 'the white lines') at an early stage, and provide an effective, efficient, independent and transparent body for resolving sporting problems and reporting integrity breaches.

207. It is important that the SRMS addresses stakeholder concerns regarding accessibility, in the sense of making the service Participant-friendly, simple and easy to access. The SRMS must be able to cater to the needs of Participants from varying levels in sport, regardless of that Participant's age (noting for example Sport NZ's strategic focus on improving activity levels for those tamariki and rangatahi who are less active), capability, and ability to communicate the nature of their complaint. Accordingly, the SRMS should provide channels for those who may face challenges in making or communicating a complaint (for example, due to a limited knowledge of English, or limited reading and writing capabilities). This emphasises the need for the Registry Office and the SRMS panel to be diverse, and we would recommend that material be accessible in both English and Te Reo Māori.

208. In our view, rather than operating under an 'opt-in system', all NSOs/NROs should be required to provide access to the SRMS through their policies. Given many of the organisations that fall under the ambit of Sport NZ are incorporated societies, it is timely to recommend as part of the passage of amendments to the Incorporated Societies Act 1908, that incorporated societies have their own dispute resolution systems (which would include mediation).

209. There will be limitations to scope on the basis of the voluntary nature of the mediation. Mediation will only be able to take place with the agreement of all participants involved in the complaint or dispute. We acknowledge that the voluntary nature may create a roadblock in some situations. We considered whether participation in the SRMS by NSOs/NROs or other relevant organisations should be mandatory, and changes made to relationship agreements (or similar agreements) to allow for this. However, the Sport NZ Group's intention is for the CMDRS options to be widely available to Participants across all sport and recreation in New Zealand, and not all sport and recreation organisations have relationship agreements (or similar agreements). Further, there are currently a variety of existing dispute resolution mechanisms across the sport and recreation sector, so we recommend voluntary participation in the SRMS on the two-year trial period. If, following the trial period, the SRMS is working well, the Sport NZ Group could then amend its relationship agreements with sport and recreation organisations (or propose new agreements for those entities that do not currently have one) to make participation mandatory going forward.

210. To address these concerns, we recommend that consideration be given to whether the NSO/NRO itself can appropriately address the complaint before referring the complainant to the SRMS. When appropriate, sports with more sophisticated systems can utilise their dispute resolution processes, whilst organisations who do not currently have suitable resources or systems to address complaints can rely on the SRMS.

211. Another concern may be where the outcome of a dispute is likely to affect parties beyond those involved in the mediation. We consider that a Sports Ombudsman could address some of these concerns, which we set out below.

212. All services would be intended to be independent, private and confidential between the parties, encouraging Participants to 'speak up' and voice concerns in a safe environment.

However, confidentiality may become an issue. Although confidentiality works in the employment context where parties want confidentiality, that may not be the case where there is, for example, a selection dispute. The outcome is obvious for all to see, and penalties for breach of confidentiality may be largely ineffective, for at least some parties. It would often be impractical to assert the outcome did not result from a mediation.

Advantages and disadvantages of the SRMS

Advantages	Disadvantages
Independent	Mediation is voluntary and does not always result in an agreed outcome
Private and confidential	The process would be voluntary so a party could refuse to engage
Addresses athlete and player concerns about negative impact on career of complainant	There is the potential for the process to be abused in bad faith/vexatious claims
Provides a pathway for complaints outside of NSOs/NROs etc	Unless the mediators are competent and trusted, the system will not be well-used
Complaints dealt with efficiently and informally whenever possible and a binding result can be achieved, if the parties agree	Confidentiality may be used as a de facto "gagging order"
Opportunity for early resolution and de-escalation of disputes	It could become costly, if the new system encourages parties to "lawyer up"
Constructive and respectful, with a variety of practical solutions available	Unless the scope is narrowed (which we understand is preferred by Sport NZ), the SRMS could open the floodgates to a multitude of complaints, some of which could be vexatious or spurious
Reduce the number of complaints turning into legal disputes	
Low cost and accessible for all	
Saves time and costs associated with managing acrimonious disputes	
Identifies early warning signs of possible systemic matters	
Supports NSOs/NROs and other relevant organisations which may lack the capability to manage a complaint	
Opportunity for parties to reach an agreed outcome whilst maintaining a constructive relationship moving forward	

Consistency of approach	
Consistent with natural justice	

OPTION B: SPORTS OMBUDSMAN

Introduction

213. This option is modelled off the existing ombudsmen schemes in New Zealand (the parliamentary Ombudsman, BOS, and IFSOS). We recommend the role of Sports Ombudsman be created, as was recommended by the Amateur Sport Work Group Report in Canada (and as exists for some sports in the United Kingdom, such as the Independent Football Ombudsman). The Sports Ombudsman would be independent, with the ability to investigate sport-related complaints, either on receipt of a complaint or of its own motion. We recommend that any individual appointed to the role should have or be able to quickly establish an appropriate mix of public profile and respect within the sporting community. As the public face of the process and communicator of decisions, the Sports Ombudsman's Office would need to be appropriately resourced. Without the difficult combination of thorough investigations, compliance with natural justice and timely decision making, the Sports Ombudsman's Office could quickly lose credibility.

214. The Sports Ombudsman would be complementary to both the services provided by the SRMS (if mediation is needed) and the functions performed by the Sports Tribunal. It would be given a discrete, investigatory remit to make findings and non-binding recommendations in relation to complaints. Such a body would help in addressing the issues faced by many NSOs/NROs, in relation to the scarcity of time, capability, and knowledge to initiate and maintain a comprehensive investigation.

215. As recently as August 2020, following recent athlete mistreatment claims in British Gymnastics, the Chief Executive of British Gymnastics, Jane Allen, publicly supported the creation of a government appointed sports ombudsman to oversee duty of care issues in UK sport (as was first recommended by Baroness Tanni Grey-Thompson in 2017, following earlier athlete welfare scandals).[68]

Structure and governance

216. We consider that a Sports Ombudsman could be created, similar to the adoption of ombudsman schemes in the New Zealand banking and insurance sectors. A suitably resourced and empowered Sports Ombudsman could provide several advantages if based on the parliamentary Ombudsman regime.

217. The Sports Ombudsman would be established by Sport NZ but sit independently of Sport NZ. While the Ombudsman would be accountable to Sport NZ initially, an advisory board could be implemented at a later point in time for the Sports Ombudsman to report to, in a manner similar to that of the BOS and IFSOS.

68 BBC Sport "British Gymnastics chief admits it fell short following recent mistreatment claims", 13 August 2020 <bbc.com/sport>.

218. This separation from Sport NZ would ensure both operational independence, and the maintenance of public confidence that complaints and disputes could be addressed in an ethical manner that promotes integrity in sport. Independence is crucial where a body is investigating matters that go beyond simple governance or selection disputes, such as systemic integrity/welfare issues within an NSO/NRO, which would form part of the Sports Ombudsman's wide investigatory remit.

219. To further ensure that the Sports Ombudsman is seen as independent, funding could come from the Treasury via Vote Sport and Recreation (rather than Sport NZ). However, this may be a matter of perceived, rather than actual, independence as we understand this funding goes to Sport NZ.

220. The Sports Ombudsman would be appointed by and accountable to a Board that provides strategic direction, and ensures resources are appropriately allocated to achieve the functions of the Sports Ombudsman. The parliamentary Ombudsman is established and governed by the OA, both BOS and IFSOS are run as registered companies, and their respective structures are set out in a constitution addressing specific details of governance, membership and funding. After a trial period, if successful, Sport NZ could ultimately consider developing an independent Sport Resolution Centre or Integrity Unit, that both the SRMS and Sports Ombudsman could sit under.

221. New Zealand has a broad statutory protection for the name "*Ombudsman*" under section 28A of the OA. Under section 28A, the Minister of Justice may give permission to Sport NZ as an organisation named in Schedule 2 of the OA, to use the name "Ombudsman".

222. The Sports Ombudsman should be supported by a Māori Advisory Panel, similar to Pūhara Mana Tangata, which was established in 2019 to provide advice to the parliamentary Ombudsman on working with Māori. We consider that the Māori Advisory Panel could provide valuable advice regarding sport and recreation issues affecting Māori, as well as assisting in spreading awareness amongst Māori regarding the Sports Ombudsman's role and the services that the Sports Ombudsman would provide. The presence of the Māori Advisory Panel would also ensure that the procedures and decisions made by the Sports Ombudsman are consistent with the principles of Te Tiriti O Waitangi.

223. The Sports Ombudsman would operate in accordance with a Terms of Reference, informed by the OA. The Terms of Reference could canvass issues including (but not limited to):

(a) the Sports Ombudsman's powers;

(b) the complaints process and relevant timeframes;

(c) the types of complaints dealt with by the Sports Ombudsman and grounds for refusal;

(d) the investigation process;

(e) decision-making methods and criteria; and

(f) resolution methods.

Powers and procedures

224. The Sports Ombudsman would have the ability to consider and investigate complaints, and to undertake investigations of its own motion. The ability to initiate investigations at its own motion is advantageous where there is public disquiet, or a series of related complaints.

225. We consider that similar to the OA, and following a complaint, the Sports Ombudsman would have a wide power to investigate any decision, recommendation, act or omission even if that decision, recommendation, act or omission did not appear to relate to the complaint.

226. However, to avoid being swamped by vexatious complaints, and keep costs within bounds, a specific ground for the Sports Ombudsman not investigating a complaint should be that "*the complainant does not have a sufficient personal interest in the subject matter of the complaint*"[69]. This would prevent the general public complaining about a selection decision, for example, but not a directly affected Participant.

227. The Sports Ombudsman would have a wide variety of powers and processes to assist in resolving complaints, including (but not limited to) investigations, mediation, negotiation, education, making non-binding recommendations and issuing public reports. These could be addressed in the Terms of Reference as part of a non-exhaustive list of resolution methods, but should be framed in a way that provides the Sports Ombudsman with the autonomy to determine which method would be appropriate to the circumstances.

228. While recommendations of Ombudsmen are typically non-binding, that is not always the case. Decisions of the Banking Ombudsmen are binding on the bank, if accepted by the complainant, but are not binding on the complainant, who may still pursue any other remedy.

229. We envisage that as the Sports Ombudsman regime establishes its credibility and effectiveness, pressure would come on sports organisations to agree to abide by some or all categories of decisions made by the Sports Ombudsman. That could be 'incentivised' by the conditioning of funding, if necessary, but peer pressure and the prospect of publicity may be enough.

230. In addition to dispute resolution functions, we consider that the Sports Ombudsman would also develop a preventative function over time. The production of non-binding recommendations, public findings, educational material and reports would provide a body of reference material for the use of NSOs/NROs to assist those organisations with the handling of internal issues. This material could then also be used to inform processes and policies across NSOs/NROs, and contribute to those organisations having an increased level of consistency in relation to how they address complaints.

231. Complaints would be made to the Sports Ombudsman through a written complaint form, which would then be assessed to ensure that it comes within the Sports Ombudsman's jurisdiction, as set out in the Terms of Reference. Similar to the OA, the Sports Ombudsman would be given the ability to decline a complaint in specified circumstances, and required to

69 Ombudsmen Act 1975, section 17.

provide the complainant with reasons for this.[70] Once a complaint is accepted, the Sports Ombudsman would be able to initiate an investigation and commence the gathering of information.

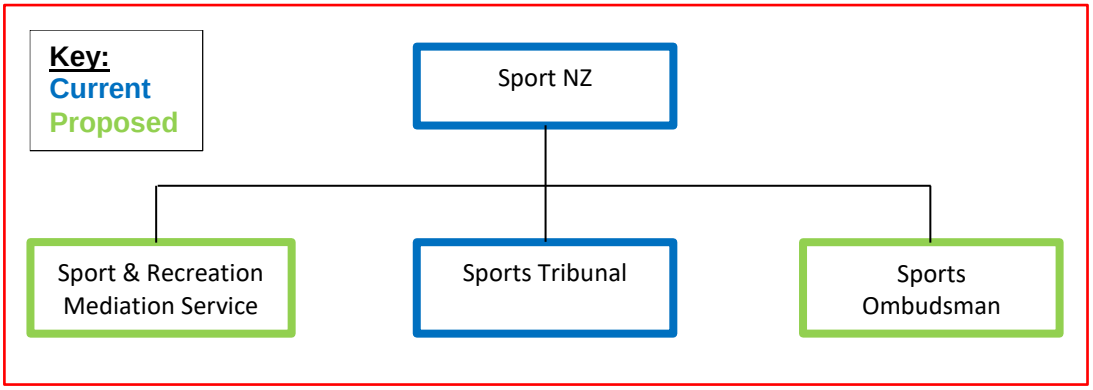
232. The Sports Ombudsman would be in control of the complaints process, and its inquisitorial nature would allow it to require the provision of statements of explanation, and documents from parties relevant to the dispute or complaint. Parties would be able to refuse to provide information on various grounds (such as legal or other privilege, protection of privacy of themselves or others), but in appropriate situations adverse inferences might be drawn from an unreasonable refusal.

233. Hearings in person would not be prohibited, but would be rare, and at the discretion of the Sports Ombudsman. The complainant and the party about whom the complaint is made as well as other affected parties, would have to be given a reasonable opportunity to make written submissions, prior to the Sports Ombudsman making recommendations or making a final decision. As a matter of natural justice, a person against whom an adverse finding is contemplated would have to be given a right to be heard or, at least, to respond.[71]

234. Any recommendations made by the Sports Ombudsman and/or the publication of reports would typically be anonymised, and generally, confidentiality applies for the benefit of complainants. For example, the IFSOS' Terms of Reference state that the dispute resolution service is confidential (subject to limited exceptions), and requires a complainant to confirm their acceptance of confidentiality in writing before the complaint can be considered by the IFSOS.[72] However, sometimes it will be very evident that the Sports Ombudsman has made a recommendation (for example, that two clubs ought to merge, or that a selection process be corrected).

235. The proposed structure for the Sports Ombudsman is set out below:

(a) **Proposed Structure**



Scope

236. Like the SRMS, any Participant, from grassroots/community involvement to elite level, would be able to complain to the Sports Ombudsman. Making the Sports Ombudsman open and

70 The grounds for a refusal would be similar to those in section 17 of the Ombudsmen Act 1975.
71 Ombudsman Act 1975, sections 18(3) and 22(7); Inquiries Act 2013, section 14(2).
72 Insurance & Financial Services Ombudsman Scheme Incorporated "Terms of Reference" 1 July 2015, clause 9,

accessible to those involved in sport and recreation at all levels is an important step in mitigating any inherent power imbalances that may exist in relationships between NSOs/NROs and other Participants.

237. This demonstrates the attractiveness of having the SRMS and the Sports Ombudsman operating in a complementary regime. While the SRMS may provide an accessible opportunity for resolving complaints, any resolution is ultimately reliant on both parties buying in to the mediation process and being sufficiently resourced to be able to participate. The presence of the Sports Ombudsman, either as an alternative avenue, or as a safety net, provides valuable assurances to complainants that their complaint will be addressed one way or another, and that any concerns regarding the NSO's/NRO's lack of engagement or strong bargaining position will be alleviated.

238. Under the SRMS, it is not clear what would happen if, for example, a club did not action a recommendation to, say, resource girls and boys sports teams equitably. The aggrieved party would have to escalate the matter to a provincial or national sports body. Under the Sports Ombudsman scheme, the club could be required by the Sports Ombudsman to report to him or her by a specified date on whether the recommendation has been implemented, and if not, to explain why.

239. The Sports Ombudsman could therefore have an ongoing supervisory role, and the ability to take the matter further within the sporting code, or publicly, even if his or her jurisdiction is no more than recommendatory.

Advantages and disadvantages of the Sports Ombudsman

Advantages	Disadvantages
Independent	May be seen as too legalistic for Participants
Impartial	Would need significant publicity/education for it to work successfully
Preventative and investigatory function (proactive and reactionary approach)	Could be costly to set up and staff
Issues can be investigated and considered without a complaint needing to be made	
Addresses power imbalances inherent in other alternative dispute resolution processes	
Decisions/recommendations/reports provide a valuable source of guidance for specific NSOs/NROs in relation to their own actions, and more generally in dealing with complaints/disputes	

Sufficient flexibility given to Ombudsman to resolve problems	
Confidentiality	
Ability to identify complaint patterns and trends/systemic issues	
Would not need support from NSOs/NROs, in the sense that the Ombudsman could initiate investigations of its own motion	

CONCLUDING COMMENTS

240. Alongside these options, and until a Sports Ombudsman can be appointed, we recommend that Sport NZ implements a whistleblowing hotline to allow Participants to make anonymous, or at the very least, confidential, complaints. This was also recommended in Steve Cottrell's 2018 report (who made the point however, that a hotline is not a substitute for having a culture and environment where athletes can speak up or where others will do so on their behalf). As stated above, organisations such as Crimestoppers provide integrity line services to various Government entities at present.

241. The presence of a publicised and accessible whistleblowing channel that preserves anonymity or is founded on an underlying understanding of confidentiality will allow complaints or issues to be raised, in circumstances where a complainant would otherwise choose to stay silent (for example, due to fear of reprisal/adverse impact on say, selection). We understand that a government-funded sports hotline has recently been set up in the Netherlands. Any whistleblowing hotline should form part of a wider approach to encouraging and fostering a 'Speak up' culture, where Participants feel comfortable raising issues and complaints (albeit anonymously), without fear of retaliation or penalty, or putting their sporting careers in jeopardy.

242. In order for a whistleblowing hotline to be effective, it is equally as important that there is awareness and education around policies and the identification of Inappropriate Behaviour. While having a hotline may assist in detecting issues and complaints at an early stage, the effectiveness of such a measure is also reliant on Participants being aware of behaviour and what conduct is inappropriate. Therefore, education will be key. As Professor McLaren recently stated:

> "*Sometimes, people don't recognise they're experiencing maltreatment. They didn't know what was happening to them was wrong or not. There needs to be programmes that make it clear to kids that what's going on is not proper and they need support within the organisation… It's a very multi-faceted problem.*"[73]

73 The London Free Press "Renowned London anti-doping crusader turns sights to mistreatment of athletes", 28 July 2020 <lfpress.com>.

243. Finally, and as stated in the Executive Summary, the scope of this Study has dictated the limits on the recommendations we have been able to make. We are aware that the Sport NZ Group, NZOC and some NSOs have ongoing initiatives around integrity issues. However in light of the latest member protection/welfare claims by athletes (for example, in Gymnastics NZ and overseas), we see the need for more work in this space. We recommend a working group is convened of representatives of those organisations and individuals actively providing leadership and service in relation to integrity issues in New Zealand sport (this could be similar to the UCCMS in Canada, as detailed in Section 6 of this Study). This working group (which would need to include athletes and players' associations – to ensure they have involvement in policy development, not just consultation) could develop a co-operative strategy during our recommended two year trial period. This strategy could include matters that are out of scope in this Study, including the consideration of a national (government-funded) Sport Integrity Unit, that would develop policies, provide education/resources, oversee the Sports Ombudsman and the SRMS, and would be aligned to international human rights and integrity standards in sport.

Section 8: Appendices

SPORT NZ INTEGRITY REVIEW RECOMMENDATIONS

Dispute Resolution and Reporting

- Pilot an independent sports complaints management service.
- Investigate whether a sports mediation service should be established.
- Explore whether New Zealand should establish a domestic appeal body from the Sports Tribunal to provide an alternative to the Court of Arbitration for Sport.
- Amend the Sports Anti-Doping Act 2006 to allow for the Sports Tribunal to have more members.
- Encourage New Zealand Rugby to use the Sports Tribunal to ensure consistency across all sports.

Partner Capability and Compliance

- Strengthen NSO capability in governance and finance through Sport NZ's NSO Capability Project.
- Investigate options for ensuring all sports organisations have a child protection officer and a child protection policy in place

Education

- Explore whether Sport NZ's parent and coach education workstreams could contribute more to child safeguarding.
- Formally evaluate existing sideline behaviour programmes with a view to expand the initiative(s) that work best.
- Increase Drug Free Sport New Zealand's education programme.
- Explore the demand for a government-provided match-fixing education programme and national reporting point for match-fixing intelligence.

Resources and Tools

- Investigate the establishment of a central online repository for sport integrity guidance and resources, similar to Australia's Play by the Rules website.
- Update Sport NZ's Safe Sport for Children guidance to reflect legislative amendments since it was initially drafted and any other changes required.
- Include integrity-related questions in Sport NZ's annual Voice of the Participant survey to gain a better understanding of participants' views on the integrity of sport in New Zealand and the impact of integrity-related issues on participation.

Policy

- Monitor developments with the proposed Police vetting reforms.
- Work with the sector to submit on the modernisation of the Charities Act.
- Monitor the Incorporated Societies Act reforms and provide guidance to the sector to help them meet their new obligations and update existing guidance as necessary.

- Work with DFSNZ and relevant regulatory agencies when the regulatory instruments governing sports foods and supplements are reviewed to ensure the views of the sport sector are considered.
- Consider whether NZ should become a signatory to the Convention on the Manipulation of Sports Competitions (the Macolin Convention).

Enforcement

- Increase DFSNZ's resources for testing and intelligence, including exploring a pool of funding for drug testing at one-off events and a system for managing doping intelligence.
- Work with DFSNZ and the Ministry of Justice to explore the possibility of DFSNZ having the power to compel the production of information in certain circumstances.

Continue to work with DFSNZ to advocate for greater flexibility in the sanctioning of lower level athletes who are found guilty of anti-doping rule violations.

TERMS OF REFERENCE FOR FEASIBILITY STUDY

Introduction

1. These Terms of Reference govern the feasibility study into the establishment of a complaints management and/or dispute resolution service for the New Zealand sports system, commissioned by the Boards of Sport NZ and High Performance Sport NZ (together the "Sport NZ Group").

Background

2. In late 2018 and early 2019, the sports of cycling[74],football[75] and hockey[76], undertook reviews into various allegations of bullying, other inappropriate behaviour and the culture of their respective high performance sports environments. These reviews all highlighted, amongst other concerns, the lack of appropriate complaints processes and mechanisms to resolve the issues being raised.

3. In November 2018, Sport NZ released the Cottrell Report which reviewed "Elite Athletes' Rights and Welfare". This report concluded there was a "growing evidence of a problem arising in elite sport in New Zealand because of a lack of genuine focus on athlete rights and welfare."[77] In recording these rights, Cottrell listed, amongst others, the right of athletes to due process and to be treated fairly including a forum and process for resolving disputes, and recommended further consideration be given to these processes.

4. Since July 2018, Sport NZ has been undertaking a Sport Integrity Review. The initial findings indicate instances of inappropriate behaviour occurring in grassroots sport, although it does not appear to be widespread. The review by New Zealand Rugby in 2017[78] also evidenced inappropriate behaviours across the whole sport from club level to the professional game.

5. As a result of these Reviews it has become clear that inappropriate behaviour is happening at all levels of sport in New Zealand, by and about athletes, coaches, managers, agents, parents, athlete support personnel, officials, administrators, employees, and others involved in sport.

6. Although this behaviour may not be widespread, the fact it is occurring is concerning. Inappropriate behaviour not only affects enjoyment and participation in sport, but also damages the trust and confidence people have in the New Zealand sports system. More importantly, the health, safety and wellbeing of individuals is being detrimentally affected by this harmful behaviour. This is particularly damaging where those individuals are minors.

[74] "Independent Review of Cycling NZ High Performance Programme" Michael Heron QC, 12 October 2018
[75] "Independent Review into NZ Football: Public Findings and Recommendations" Phillipa Muir, 3 October 2018
[76] An independent review into allegations by Black Sticks players undertaken by Maria Dew, 2 May 2019
[77] Paragraph 2, page 2
[78] "Respect and Responsibility Review: New Zealand Rugby" September 2017

7. Based on these reviews and the evidence revealed, this behaviour includes:

- Harassment, bullying and abuse including physical, verbal abuse, psychological, social (including via digital means) and sexual harassment
- Discrimination particularly on the basis of gender, race, sexual orientation (including side-line and spectator behaviour)
- Match fixing
- Doping
- Betting
- Corruption, fraud and other money related crimes
- Inappropriate conduct arising from an abuse of power e.g. between coach and athlete or participant
- Other ethical and conduct breaches e.g. conflicts of interests
- Unfair decision making processes in breach of natural justice

(The above behaviours are collectively referred to as "Inappropriate Behaviour" in these Terms of Reference).

8. It has also become apparent that in some cases, victims of Inappropriate Behaviour are not informing their sports organisations or other relevant bodies about it. If they do, there are instances where the concerns are either not addressed, not escalated to the relevant person/s or not resolved to the satisfaction of those concerned. There is also evidence to suggest some complaints are being dealt with in an unfair or improper manner, without regard for natural justice.

9. While most sports organisations have rules or codes of conduct and procedures to manage breaches of those codes, evidence suggests some are struggling to enforce or implement them effectively. There may be many reasons for this including lack of time and resources, lack of capability and expertise and in some cases conflicts of interest and preservation of self-interest.

10. As the government agency responsible for oversight and leadership of the sport and recreation sector, Sport NZ has an important role in leading, resourcing and supporting sports to address these issues. Its statutory functions also empower it to facilitate the resolution of disputes between person or organisations involved in physical recreation and sport.

11. HPSNZ's mandate is to be the lead agency for New Zealand high performance sport including athletes and sports people and to provide a holistic and multi-disciplinary educational approach for overall personal, career and athletic development of high performance sports people. The health, safety and wellbeing of athletes and all those who participate in the high performance sports system in New Zealand is critical to achieving this objective.

12. For the Sport NZ Group, the health, safety and wellbeing of everyone involved in sport is paramount and must be prioritised. Not only is this critical for the individuals affected by the harm inflicted on them, but it is necessary to help maintain the trust and confidence of

New Zealanders in our sports system, as one that is inclusive and operating with the highest degree of integrity.

13. We know from the many recent examples in international sport[79], that New Zealand is not alone in grappling with these issues. We should learn from these examples and carefully consider their responses. However, in the end, we must find a proportionate New Zealand solution that works for our unique country; one that enables everyone involved in sport to speak up and deal with Inappropriate Behaviour. This will enable us to take appropriate steps to ensure the health, safety and wellbeing of all those involved in sport but it requires a unique and holistic approach.

14. Work has been underway to address some of these matters for many months. In addition to the Cottrell Report, this includes completing the Sport Integrity Review - the findings and recommendations of which will be released in mid 2019. HPSNZ is also undertaking extensive work in developing the 2030 High Performance System Strategy along with system stakeholders which will address many of these issues.

15. As an interim step, the Sport NZ Group has recently established[80] an independent Interim Complaints Mechanism (ICM) for carded athletes only.

16. In anticipation of the outcomes of the Sport Integrity Review and the 2030 High Performance System Strategy, the Sport NZ Group wishes to consider options for establishing a permanent complaints and/or dispute resolution mechanism or service for New Zealand sport.

17. This mechanism or service is not the only step necessary to minimise and manage Inappropriate Behaviour. Other steps will be necessary and implemented in due course including education, capacity building and training to effect changes in the culture that allow this behaviour to exist.

Purpose of the Study

18. The purpose of the feasibility study is to consider the options, risks and benefits associated with centralising a complaints management and/or dispute resolution mechanism within a central mechanism and to develop a structure for it which manages and resolves complaints about Inappropriate Behaviour in sport throughout New Zealand (from clubs and schools through to national level), and enables the fair and efficient resolution of such complaints.

19. The mechanism or service which is proposed, should achieve the following objectives in managing Inappropriate Behaviour:

(a) To support the development of a “speak up” culture;

79 For example, reports into USA Gymnastics and the USOC; the UK Duty of Care Report by Tanni Grey-Thompson (April 2017), British Cycling Independent Review into the Climate and Culture of WCP (June 2017); Report of the Review of Australia’s Sports Integrity Arrangements (August 2017); Independent Review of Integrity in Tennis (April 2018).
80 With effect from 1 May 2019.

(b) To provide for an independent complaints mechanism that anyone can use to report Inappropriate Behaviour in New Zealand sport including participants in high performance sport or those involved at community level in grassroots sport;

(c) To ensure the fair and efficient resolution of complaints and disputes;

(d) To ensure the efficient use of resources, expertise and capabilities;

(e) Not to affect the rights of parties to take other action including to regulatory authorities, law enforcement agencies, international sport processes, tribunals and courts or the Sports Tribunal;

(f) To enable sports to comply with obligations to their International Federations;

(g) To comply with the law, including likely changes to the Incorporated Societies Act; and,

(h) To be a national service incorporating all key stakeholders in the New Zealand sports system including national sports organisations, regional sports organisations, clubs, secondary schools, the New Zealand Olympic Committee; Paralympics New Zealand, and athlete groups including the NZOC Athletes Commission and the NZ Athlete's Federation.

Scope of Work

20. The scope of work for this study is to:

(a) Develop no more than three options for a complaints management and/or dispute resolution mechanism or service (or services) (CMDRS), which shall include:

- the structure, governance, powers, scope and procedures for each option;
- the advantages and disadvantages of each option
- whether any option should be mandated or optional; and if so how;
- any reasons why the CMDRS may not be appropriate for both professional and amateur sports.

(b) Assess the feasibility of each of the CMDRS options in consultation with stakeholders, including the implications for sports existing processes and those of other authorities; and,

(c) Identify the steps, and the nature and extent of resources, required to implement and operationalise each CMDRS option.

Review Methodology

21. The Reviewer will:

(a) Study all relevant documentation and seek information on:

- the reviews referred to in the Background and in particular the recommendations relating to mechanisms for complaints management and dispute resolution;
- the existing policies and guidance developed by Sport NZ on managing complaints and disputes for Inappropriate Behaviour[81]; and
- the existing structures and procedures currently used for managing complaints and disputes in NZ sport;

(b) Research and assess mechanisms and services that have been or will be implemented in New Zealand in a non-sporting context as well as in other countries in a sporting context to manage complaints and the resolution of disputes about Inappropriate Behaviour including whistle-blower mechanisms;

(c) Discuss with Don MacKinnon the "Review of the Sports Tribunal" (August 2015) to seek his views on whether his recommendations should be implemented as part of this review; and if so how;

(d) Liaise with Dyhrberg Drayton Employment Law to understand the frequency, number, nature and scope of complaints being made through the ICM (on an anonymised basis) so the insights and learnings can be taken into account for the CMDRS;

(e) Develop options for a CMDRS;

(f) Utilise the Sport NZ established consultation groups/s for its integrity programme of work to discuss and consult on the CMDRS options, proposal, implications and issues;

(g) Report to the Sport NZ Group with a written report including options and recommendations.

22. The final report will be presented to the Sport NZ Group by 30 June 2020, with interim updates at each Board/s meeting from the commencement of the Review until the report.

23. The expected timeframe for the work is as follows:

(a) Research and study of documentation and mechanisms in other jurisdictions – October/November 2019;

(b) Develop options and implications – November 2019 to February 2020

(c) Consultation – February to April 2020

(d) Draft Report – by 15 May 2020

(e) Final Report – by not later than 30 June 2020

Other Matters

24. Sport NZ will provide such administrative assistance to the Reviewer and the Working Group as may be necessary.

25. Sport NZ will require sign off on all external communications relating to this project that the Reviewer deems necessary in order to effectively complete the study.

26. The Reviewer shall report to Sadie Verity, Project Manager – Sport Integrity on behalf of the Sport NZ Group in relation to progress of this Review.

27. The Reviewer's final report will be made public.

28. These Terms of Reference may be amended by agreement between the Sport NZ Group and the Reviewer.

Approved by Sport NZ and HPSNZ
15 July 2019

81Including Safe Sport for Children; NZ Policy on Sports Match Fixing and Related Corruption; ClubKit, Sport Integrity Framework.

SUMMARY LIST OF INTERVIEWEES

Interviews were conducted with representatives of the following organisations and individuals:

- Aktive – Auckland Sport & Recreation
- Basketball New Zealand
- Crimestoppers New Zealand
- David Howman, sport integrity consultant
- David Rutherford, Special Advisor, Centre for Sport & Human Rights
- Don Mackinnon, sports lawyer
- Drug Free Sport New Zealand
- Gymnastics New Zealand
- High Performance Sport New Zealand
- Maria Clarke, Sports lawyer
- Netball New Zealand
- New Zealand Olympic Committee
- New Zealand Olympic Committee Athletes' Commission
- New Zealand Cricket
- New Zealand Athletes Federation
- New Zealand Rugby
- New Zealand Rugby League
- Paralympics New Zealand
- Paul David QC
- Scouts Association of New Zealand
- Sir Bruce Robertson, Chair of the New Zealand Sports Tribunal
- Special Olympics New Zealand
- Sport Australia representatives
- Sport Hawke's Bay
- Sport New Zealand
- Steph Dyhrberg, Barrister
- Touch New Zealand
- Yachting New Zealand
- YMCA Southland.

Simpson Grierson

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