



25 January 2007

**WELLINGTON
RUGBY FOOTBALL
UNION Inc.**

Jeff Hamilton
Investigator
Competition Branch
Commerce Commission
PO Box 2351
Wellington

Dear Jeff

Variation of Decision 580 under Section 65 of the Commerce Act 1986

Thank you for the opportunity to make a submission on the variation to the salary cap proposed by the NZRU, although it is disappointing that we have only had a week to respond.

We note that the NZRU request incorporates in Appendix 3 a letter we wrote to the NZRU when they were seeking feedback in September 2006 regarding the need for salary cap relief due to the unavailability of the All Black players to play for their provinces during the Air NZ Cup competition in 2007. NZRU also sought suggestions as to the extent of the relief that should be provided. For the reasons set out in our letter, there must be some relief from the salary cap regulations in 2007, and in our opinion it should be in the following form:

- a) Notional values should only be assigned to the 28 first choice players (including the 22 conditioning All Blacks) in each Super 14 squad with a further 8 players in each squad classified as members of the Wider Training Group with a notional value of \$10,000 each. Any additional players brought into the squad to cover the conditioning All Blacks should have no notional value.
- b) The amount included in the Provincial Union's salary cap for the All Blacks who are in the World Cup squad and who do not participate in the Air NZ Cup competition in 2007 should be nil. In other words their PU salary should be discounted by 100% and there should be no notional value. If for some reason, the All Blacks coach decides that players should play some Air NZ Cup matches to achieve match fitness then a proportion of their remuneration (including their notional value) should be included in the salary cap. This means that the discounting would exactly match that applied for players who are injured or loaned to another provincial union for a full or part season.

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Comments on the NZRU Proposal

The discounting of notional values proposed by the NZRU appears to meet the requirements in a) above but we cannot be certain as we do not have access to the table in Appendix 1 that gives specific salary cap relief on a player by player basis.

The NZRU proposal does not meet our requirements in b) above and as a result we believe it fails in several areas. The basic objective of every union is to win the Air NZ Cup by putting the best possible team on the field within the restrictions of the salary cap. If players are not available for whatever reason, then to preserve the integrity of the competition, provinces must be free to recruit players of similar ability or the next best players to fill the vacant positions. This is not possible under the NZRU proposal for the following reasons.

Firstly, the discount level of \$18,000 per player is totally inadequate. It is only \$3,000 higher than the minimum salary that must be paid to a player in a Provincial Union Contract and less than half of the average cost that we calculated. Even the NZRU acknowledge it is conservative and "at the lower end of the Provincial Unions' estimates of the additional costs they face" (paragraph 27). Despite requesting information from the provinces, the NZRU appear to have ignored this advice and arrived at an unrealistically low figure of \$18,000.

Their assessment is also based on information supplied by only 5 of the 14 provincial unions (36%). Is this a representative sample, bearing in mind that 4 of the 5 are brief emails that appear to lack any depth of analysis? As we are not privy to the information set out in Appendix 2 of their application we cannot compare their assessments with our calculated average cost of: per player.

The level of \$18,000 appears to be based exclusively on the promotion of players within the province and obviously makes no allowance for the recruitment of players from other provinces and overseas – these are methods that we (and no doubt other provinces) intended to pursue to fill some of the vacant positions to maintain the competitiveness of the team. For example, we recruited Spice from Wales and Tuirirangi from Queensland in 2006 to cover the positions of half back and prop to cover the unavailability of All Blacks Weepu and Tialata respectively for the first half of the season. This is obviously more costly than local recruitment.

The following table shows the salary cap impact for Wellington of the NZRU proposal on the assumption that the average salary for the seven Wellington All Blacks in 2007 is \$50,000 and the salary for his replacement is \$18,000 (NZRU level) or: Wellington average).

	<u>NZRU Proposal All Black</u>	<u>NZRU Value Replacement</u>	<u>WRFU Value Replacement</u>
PU Salary		\$18,000	
AB Discount (60%)		Nil	Nil
2007 World Cup Relief	<u>-\$18,000</u>	<u>Nil</u>	<u>Nil</u>
Net PU Salary in Cap		\$18,000	

Notional Value	<u>\$50,000</u>	<u>Nil</u>	<u>Nil</u>
Player Remuneration in Cap		\$18,000	
Total Player Remuneration in Cap (per available player)		\$70,000	

Secondly, it does not recognize that provincial unions must continue to contract All Blacks and potential All Blacks players for the 2007 season because there is no certainty that the players will be selected for the World Cup. They may miss selection due to a loss of form or an injury that makes them unavailable for the World Cup but available for at least part of the Air NZ Cup. The salary (discounted by 60%) and notional value (not discounted) for these players would be included in the cap. Players expect certainty in their income so cannot be contracted by provincial unions at the minimum value of \$15,000 in the expectation that they will be All Blacks.

It should also be noted that a player cannot be an All Black unless they are contracted to a provincial union in NZ.

Thirdly, the notional value of \$50,000 for each All Black remains in the salary cap in full even though the player is unavailable to play for the province. This has the effect of assigning the notional value of an All Black to a journeyman player – this is illogical.

Therefore Wellington would be required to include an additional \$50,000 per All Black in our salary calculation – a total imposition of \$350,000 for the 7 Wellington players who are likely to be in the World Cup squad. This is despite the fact that Wellington receives no benefit at all from these players either on or off the field during the 2007 year. In effect, it reduces our salary cap to \$ in 2007 compared to the \$2.064 million available to most other provinces. This is clearly unfair to those provinces that have a significant number of All Blacks (Wellington, Canterbury and Auckland).

Fourthly, the NZRU proposal is silent on the impact of the relief provisions in the event that an All Black is released by the national selectors to play a couple of Air NZ Cup matches to make them match fit. Provincial unions will have made player contracting decisions based on the assumption that this would not happen so any variation would have negative effects on their salary cap. It would be a total miscarriage of justice for a provincial union to be penalized and fined for breaching the salary cap as a result of decisions made by the All Blacks selectors who are NZRU employees. Our suggestion to amend the discounting provisions to match those for injured and loaned players will overcome issues such as these.

In the event of All Blacks being released we would suggest that a portion of their salary and notional value (one ninth per game played) should be included in the salary cap for the relevant province.

Additional Factors

On the third page of Appendix 2 of their proposal, the NZRU set out additional factors that they have taken into account, namely:

- a) Relief should only compensate Provincial Unions for the additional costs associated with their All Blacks being away for the Rugby World Cup.

WRFU Comment

We agree that this should be the outcome of the relief but as shown above their proposal does not achieve this goal.

- b) Any relief should be at the low end of the Provincial Union estimates.

WRFU Comment

This conflicts directly with factor a) above.

- c) All the Franchise based Provincial Unions have some salary cap headroom so the NZRU should be careful not to provide too much relief as this could be used for future salary cap planning purposes.

WRFU Comment

We are unaware of the situation in other provinces but Wellington has no salary cap headroom in 2007 because it has had to recruit additional players to cover the All Blacks. At this stage of the year the 2007 contracts for all senior players are in place so it is not possible to manipulate the timing of salary payments for salary cap planning purposes as suggested by the NZRU.

- d) The salary cap architecture already allows for provincial union remuneration to be discounted for All Blacks for salary cap purposes and so reduces the impact of their unavailability. The discounts were to recognize that on the one hand All Blacks are valuable to provincial unions on and off the field but, on the other hand, their availability can be controlled by the All Black coach.

WRFU Comment

This overlooks the fact that the notional value also reflects the importance and benefits of an All Black to a provincial union. Even though the proposal effectively minimizes the Provincial Union remuneration element of the salary cap, the provincial union still has to bear the impact of the full notional value. All Blacks will be of no value to provincial unions in 2007 because for the first half of the year they are involved 100% with their Super 14 franchises

Conclusion and Recommendation

We believe that the relief provisions proposed by NZRU are not fair and equitable to provinces with a significant number of All Blacks because they place a considerable restriction on their ability to select a competitive team. It is totally illogical that the

salary cap should include a value for players who are not available to the team because of the direction of a third party – particularly given it is the body administering the salary cap regulations that is the same party that is imposing the restraints on player availability.

In our opinion, the provision of relief should be broadened to exclude in full the notional values and provincial union salaries of the All Blacks who do not play in the Air NZ Cup due to Rugby World Cup commitments.

This could be readily achieved by expanding the existing salary cap provisions that give relief for injured and loaned players to include members of the World Cup squad. This would apply for 2007 and any future World Cup years. This would also cover the possibility of some All Blacks being released to play some Air NZ Cup matches in 2007.

We are available to meet to discuss this submission with you if you wish.

Yours sincerely

Greg Peters
Chief Executive Officer