

## NZRU SUBMISSIONS – PART 2

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### **INTRODUCTION**

1. In this submission the NZRU will comment on the following issues raised in the Draft Determination:
  - a. The “hardness” or otherwise of the proposed salary cap
  - b. The Commission’s views on Productive Inefficiency
  - c. The current status of discussions with the NZRPA and its impact on the counterfactual

### **A. THE HARDNESS OF THE PROPOSED SALARY CAP**

#### ***Use of Non Financial benefits to circumvent the Cap***

2. The Commission has raised a concern that wealthier Provincial Unions can spend more money on better coaches, medical specialists and facilities which will encourage players to stay and therefore undermine the cap’s redistribution of talent. The NZRU’s response to this is as follows:
  - a. First, in the NZRU’s experience, players would not see those so-called “benefits” as remuneration. They would no doubt be factors in determining the environment that a player considers that he is best able to perform and achieve higher honours in but such things are not recorded and/or negotiated and/or given a valuation as part of player remuneration in this or any other employment environment that we are aware of.
  - b. Secondly the NZRU is seeking to encourage across the board expenditure by all Provincial Unions on better coaches, medical specialists and facilities areas so that player skill levels increase, players play better, teams perform better, crowds are better catered for and the fans and sponsors have an environment in which their enjoyment of the game is enhanced. Expenditure of this kind is specifically incorporated within the compulsory entry criteria for the Air New Zealand Cup competition i.e. minimum standards for stadia, coaching and team management have to be provided and the NZRU will certainly be encouraging further investment in these areas both under the factual and the counterfactual.
  - c. All Air NZ Cup Provincial Unions are required to have academies and a “B” Team so more money will have to be spent on coaching and player development but this can only contribute to an overall increase in player skills.
  - d. The NZRU fully intends to include any non-financial “benefits” provided to an individual player by a Provincial Union within that provincial Union’s Salary Cap Payments. This is covered in the CEA and by the draft Salary Cap Regulations (“the Regulations”) with a broad definition of “benefits”. Further the Regulations provide guidance on the evaluation of these benefits with the following categories specifically contemplated and the ability for the NZRU to issue valuation policies on other types of benefits:

- (i) Motor vehicles – there are three valuation bands based on the vehicles market value which determine the value that must be included in the salary cap where a player is provided with a motor vehicle by a Provincial Union. Where a Provincial Union transfers the ownership of a motor vehicle to a player, the full market value must be included in the salary cap. It is incumbent on the Provincial Union to demonstrate the market value of the motor vehicle but the NZRU has the ability to over-rule this and apply another value;
- (ii) Accommodation – the NZRU is presently developing a valuation policy in relation to accommodation.

### ***The Lack of Published Valuation Policies***

- 3. The Commission has also referred to the lack of valuation policies available at present. The Regulations will specifically incorporate a reference to valuation policies having to be in accordance with generally accepted valuation policies and procedures.

### ***The Use of Other Legitimate Payments to Players***

- 4. If Provincial Unions are prepared to spend money on buying the right to use a players' image, for instance, to promote junior rugby or any other aspect of the Provincial Union's operations within its region then that is a legitimate payment with a legitimate business purpose that the NZRU is not trying to cap or restrain. Likewise, if Provincial Unions are prepared to employ players as coaches, that will only contribute to an enhancement of player skill levels within a Provincial Union – especially given that many of the players in the Air NZ Cup are only employed on a part-time basis. The Provincial Union employing such players in that capacity is no different to any other employer employing them on a part-time basis as a secondary job to their job as a player. For the reasons identified by Wayne Smith, the NZRU does not anticipate that allowing this sort of expenditure to occur outside the cap, will have the effect of undermining the effect of the salary cap. See also para 12 regarding the avoidance of rorts.

### ***Absence of Revenue Sharing***

- 5. One of the Commission's concerns about the effectiveness of the cap in the Draft Determination is that it is not accompanied by provisions for revenue sharing which are incorporated within some salary caps particularly in North America. There are a number of points that the NZRU would like to make in response to that:
  - a. The NZRU has, since the advent of professionalism, gradually increased its funding allocation to Provincial Unions and hence there has in fact been a form of revenue sharing in operation since professionalism first came on the scene. In 1995, funding of Provincial Unions by the NZRU amounted to \$2.1 million. Funding of Provincial Unions in 2005 amounted to \$21.7 million which excluded the one-off special payment to Provincial Unions of approximately \$7.3 million and Test and other match KPI and administration fees of \$4.1 million. Of that \$21.7 million, \$14.4 million was paid directly to Provincial Unions and \$7.3 million was given by way of indirect support.

Total Provincial Union funding is forecast to be \$25.6 million in 2006, a further increase of \$3.9 million or another 18%. This level of funding represents some [ ] of projected NZRU revenue (subject to exchange rate fluctuations) that is distributed to Provincial Unions.

- b. About \$0.4 million dollars of this increased funding for 2006 is directly attributable to funding Provincial Union's for an increase in registered player numbers. A further \$1.3 million of the forecast increase is due to new direct payments to Provincial Unions that were not in the previous NPC Division One but will be in the Air New Zealand Cup i.e. the Premier Division. This funding is intended to provide these Provincial Unions with access to substantially similar levels of support as other Provincial Unions in this competition. Additional direct support for the Air New Zealand Cup in 2006 is estimated to be about \$1.3 million taking indirect NZRU support for the new competitions to \$2.9 million. In addition to the direct and indirect funding, a number of Provincial Unions have received (and will continue to do so) match hosting payments from the NZRU and distribution and administration fees from Rebel Sport Super 14 Franchises. In the period 2002-2004, these payments amounted to almost \$22 million or more than \$7 per annum on average.
- c. In addition to the above, the NZRU has developed a proposed funding model which is set out in the document headed "Provincial Union Funding Review – Draft Report March 2006" which in essence proposes a new funding model for Provincial Unions for 2007 – 2009 based on:
  - a core distribution for Air New Zealand Cup Provincial Unions calculated on the number of registered players.
  - A competitions grant for Air New Zealand Cup Provincial Unions comprising a non-franchise host grant of \$250,000 for eligible Provincial Unions, a salaries and services grant of \$50,000 (tagged for coaches and support staff) and a non-NZRU contracted player grant of \$10,000 per eligible player (i.e. for every player in a Provincial Union's Air NZ Cup squad of 26 players who is not centrally contracted, a payment of \$10,000.
  - A Franchise Host support grant of \$100,000 for Provincial Unions with less than \$10,000 registered players that host Rebel Sport super 14 Franchises. (i.e. the Otago and Waikato Provincial Unions)

The effect of this is that for 2007, Air New Zealand Cup Provincial Unions will receive \$10.9 million in direct funding specifically related to participation in the Air New Zealand Cup Competition plus a further \$0.9 million in funding for their academies and a further \$2.5 million in relation to Community Rugby within their provinces

- d. In addition to this direct funding, as explained in the application, the NZRU centrally contracts about 150 players (i.e. the full-time professional players) plus a further 50 for Wider Training Groups and the NZ Sevens squad in the Air New Zealand Cup and hereby provides the bulk of their income. This is itself a form of revenue sharing.



- c. a Collective Employment Agreement that provides for guaranteed retainers, revenue sharing with players and performance payments for achieving promotion to higher teams and winning team performances in competitions to ensure that there are rewards for skill development and talent is able to be retained in New Zealand;
  - d. the on-going structure of Provincial Union funding which is proposed to operate over the next three year period to assist in “levelling the field” in the Air New Zealand Cup;
  - e. establishment of academies for every Air New Zealand Cup Provincial Union.
9. All of these factors will, in the NZRU’s opinion, combine to contribute to greater evenness of competition and in conjunction with a salary cap, ensure that all of the public benefits that the NZRU contends will flow from a more even competition will indeed materialise.

***Pressure on the NZRU to Relax the Cap***

10. In a number of places, the Commerce Commission refers to pressure coming to bear on the NZRU to relax the cap which could lead to it being less effective. The NZRU’s response to that can be summarised as follows:
- a. for at least the next three years, that pressure is not likely to come from the NZRPA and given that the Salary Cap has being “agreed” as part of a package which contains matters of considerable benefit to players such as guaranteed retainers and revenue sharing, which the NZRU anticipates the players will want to continue into the future, the NZRU will have considerable bargaining leverage to resist any material weakening of the cap in any future negotiations;
  - b. Any pressure to relax the Cap from Provincial Unions because of roster instability will be resisted. That is after all, in part, what the cap is designed to achieve for Provincial Unions hard up against the cap.
  - c. There seems little likelihood of any pressure from the NZRPA to raise the level of the cap by reason of declining remuneration for players at the lower end of the remuneration spectrum given the figures forecast for player spend set out above.
  - d. The NZRU Board is totally committed to the success of the Air New Zealand Cup which will only occur if it becomes a more even competition. The NZRU Board will strenuously resist any pressures that undermine that objective especially if it also threatens the financial viability of any of the Provincial Unions competing in that competition.
  - e. Any weakening of the cap will inevitably contribute to a less even competition which in turn is likely to affect (i.e. lower) the broadcasting value for the Air New Zealand Cup and it is in everyone’s interests not to do that.

***The Inclusion of Specific Exemptions Could Undermine the Hardness of the Cap***

11. Each of the exemptions contained in the Regulations is designed to address a specific point and was the subject of negotiation with the Provincial Unions, the Franchises and the NZRPA. It does not seem to the NZRU to be appropriate to

point to the fact that there are exemptions and argue that therefore this calls into question the hardness of the cap without studying each of the exemptions in turn.

12. Each of the exemptions agreed with the NZRPA is set out below with a brief description:

- **Genuine Employment Agreements** – this contemplates that a Provincial Union may separately employ a player to provide other duties or services other than playing/training for rugby promotional work or media interviews. This already occurs and will occur under the counterfactual. The NZRU is very clear that it does not want the salary cap to impinge on the ability of players to seek secondary employment to grow themselves or assist in the transition to life after playing. This accords with the adage that “better people make better players”. The Regulations require a Provincial Union to show the NZRU that the employment is genuine and the remuneration represents fair market value (i.e. strictly no rorts) and the NZRU intends to audit this area rigorously. Ultimately, any genuine employment remuneration will not be about playing rugby so why should the Salary Cap attempt to include it? This exemption is very hard to cheat on;
- **Player Agreements** – similar to Genuine Employment Agreements, a Provincial Union is able to separately contract with a high profile player for the use of the player’s image or for the player to provide promotional services over and above what he is required under his employment agreement to do. This exemption is necessary as the CEA provides restrictions on when and how players and their images can be used by a Provincial Union for promotional services. For example, players must be used in groups of three or more, they must appear in team attire and there are limits on the ability to use players in “campaigns”. For this reason, a Provincial Union may decide to contract with a high profile player to use this player in their individual capacity to leverage off the player’s image. This requires that the Provincial Union demonstrate that it is paying fair market valuation for the services/image and it must demonstrate that it has actually used the player or his image in a manner not covered by the CEA. Again, the NZRU will rigorously audit this area. This is also a difficult area to cheat on as there are only a handful of players who will justify a Player Agreement and as it is a commercial arrangement at arms length for a reason other than playing/training for rugby there seems to be no reason for the NZRU to attempt to include this in the Salary Cap. This is consistent for instance with the UK Premier Rugby Cap.
- **Provincial Union Team Performance Incentives** – where a Provincial Union appears in the quarter-finals, semi-finals or final it has the ability to drive further revenue particularly where it is hosting these games. At the outset of the season this is difficult to predict with certainty particularly in an even competition. Obviously the performance of the players is the critical driver in making the play-offs. Given that the Provincial Union, the stadium owner, suppliers and the local community in general benefits from the success of the team, the NZRU believes the players should rightfully share in this. The key point under this heading is that the amount of the payment that is exempt is capped. If the Provincial Union pays more than the specified amount to its players as win bonuses the excess will count towards the Salary Cap. It is not possible to “rort” this exemption;

- **Player Apparel, Match Tickets, Meals and Travel Assistance** – these are operational matters and minor in the scheme of things as players get supplied with apparel, travel and meals as part of performing their employment. Likewise an exemption exists for two match tickets for players to provide to their family and friends to watch them play;
  - **Relocation Expenses for Loan Players** – where a player is loaned to another Provincial Union to play in the Premier Division the CEA provides that the player is entitled to “actual and reasonable expenses” up to \$1,500 in relocation costs and up to \$250 in weekly accommodation costs. This is reflected as an exemption in the Regulations. It should be a straightforward exercise to assess whether any cheating is occurring under this heading;
  - **Financial Loan** – there is an exemption for a loan made to a player by a Provincial Union but only where an interest rate of market plus 2% is charged;
  - **Employment Relationship Problem** – as an employer under a CEA there is a recognition that there could be a genuine employment relationship problem that results in a settlement which will be exempt from the Salary Cap as it is not a payment to a player to play rugby. There are a number of formalities to comply with in order for a payment under this heading to be valid and hence it will be difficult to cheat such situations;
  - **Educational Fees Waived** – where an educational institution waives the fees for a player to attend the course this is exempted. However, if the Provincial Union pays the fees or has a commercial arrangement with the educational institution whereby players receive free tuition, there is no exemption.
13. These are the only exemptions contemplated by the CEA and Regulations and there was considerable consultation and thought given prior to these being included. The NZRU does not believe that targeted exemptions undermine the robustness or “hardness” of the Salary Cap. They are common exemptions in Salary Cap situations and all are difficult to cheat on.
14. For similar reasons, the NZRU considers that the discounting provided for All Blacks, and to a lesser extent veterans, does not affect the hardness of the cap. All Blacks will miss parts of the Premier Division through their obligations to the NZRU. This is why a discount applies to their Provincial Union remuneration as they will not actually be playing for the Provincial Union for the full period of the competition. Also they will be replaced by players whose remuneration will be subject to the Regulations and hence it was considered to be fair to discount the full remuneration paid to All Blacks. The discount for veterans is recognition of the service these players have provided but is set at such a level (8 years) that it currently would only apply to approximately 6-8 players in the Premier Division. It is intended in part to encourage Provincial Unions to nurture their players and encourage them to stay. We might expand on player retention and the global market
15. The Commerce Commission observes at para 502 that *“The final result might be that the payrolls of wealthy unions may not breach the specified cap, but in effect total player payments may routinely exceed it”*. In response to this, the NZRU submits that the Salary Cap is about capturing payments to players to play rugby and if other payments are made to players which are genuine and for valuable consideration and which are not related to playing rugby, the cap can still be regarded as a hard cap.





- c. with the increase in player spend by the non-franchise based Premier Division Unions, there are increased options available to players with increased remuneration on offer;
  - d. anecdotal evidence from the transfers occurring at the end of 2005 and other player movement is that players are in fact moving to take up more opportunities to play professional rugby. See for examples of articles from the Dominion Post dated 16 March 2006, the Weekend Herald dated 1 April 2006 re players leaving Auckland and North Harbour to go to amongst other places, other Provincial Unions to take up professional contracts. **See Appendix 1 to Part 2.**
19. There may well be pressure on the NZRU to “top-up” salaries where a Provincial Union is constrained by the salary cap yet wants retain a player who would otherwise move overseas. This is nothing new as Provincial Unions have always operated within budgets and the NZRU has been seen as having the “deeper pockets”. The NZRU makes its own contracting decisions about the relative merits of individual players and will continue to do so whether a salary cap is in place or not so this will occur under the factual and the counterfactual. If the NZRU does increase payments to retain a player in New Zealand, that does not undermine the cap because the NZRU payment will apply whichever Provincial Union the player plays for.

***Team Specific Talent being dispersed Leading to a lowering of skill levels***

20. The NZRU acknowledges the concept of “team specific talent” enhancing the performance of some players’ skills outlined in para’s 528-531 but submits that too much emphasis has been placed on this by the Commission.
21. There is no question that players can benefit from playing in a strong team amongst quality players. This is particular so of younger players who can learn significant amounts from playing alongside more experienced and skilled players.
22. However, this ignores other considerations such as the following:
- a. ultimately a rugby player develops and gains experience through playing in competitive matches – refer Wayne Smith’s statement. It is the NZRU’s view that players and New Zealand rugby as a whole will benefit more from having players playing in an intensive competitive competition across many teams as opposed to having a limited number of strong teams;
  - b. the team specific talent theory applied in a rugby sense ignores the benefits that accrue through a better player joining another Provincial Union and improving the skill of players in that Provincial Unions. This is particularly so where a number of experienced and skilled players join a Provincial Union – e.g. Tasman;
  - c. there are only a finite number of playing positions in the current stronger Provincial Unions. While a player may develop in a certain environment this development can stall if there are no opportunities to actually play the game. Accordingly, stockpiling of players by the stronger, more financially secure Provincial Unions which the salary cap is designed to avoid, hinders a player’s development;
  - d. NZRU has a comprehensive High Performance Plan and is spending in excess of \$7 million dollars annually on improving the development of players across New Zealand. Aspects of this include the 14 academies, having NZRU contracted resource coaches available to work with all Provincial

Unions, and the "B" competition and a very strong secondary school, U19/U21 programme across the whole country.

## **B. COMPETITIVE DETRIMENTS – PREMIER PLAYERS SERVICES MARKET**

### ***Productive Inefficiency***

23. The Commission anticipates at para 553 that there will be extra compliance costs to Provincial Unions in relation to the Salary Cap.
24. The critical point here is whether this means extra expenditure over and above what the Provincial Union would spend in the counterfactual or whether the actual costs to Provincial Unions would remain the same and the "additional work" would be absorbed by existing employees of the Provincial Unions.
25. The NZRU is not aware of any Provincial Union that has employed or intends to employ extra resources to deal with the compliance issues arising from the Salary Cap. Rather, in all cases the NZRU has been advised that the CEO or Finance Manager has assumed responsibility for the Salary Cap as part of their existing roles.
26. Therefore, the NZRU believes that the Commission's estimate of an additional cost of \$15,000 per Provincial Union is an over-estimate. This is particularly so as the Commission accepts that only a few Provincial Unions will be constrained in the first few years of the Salary Cap meaning that the smaller Provincial Unions will need to devote fewer resources to ensuring compliance. The NZRU stands by its estimate of \$10,000 per Provincial Union based on 2 x \$70,000 Salary Cap enquiries/breach investigations per annum.

### ***Loss of Player Talent***

27. The NZRU does not agree with many of the assertions of the Commission in relation to the potential loss of player talent.
28. The first assumption set out in para 556 is that average player salaries will fall. All of the market activity since the NZRU announced the new competition format and its intention to have a Salary Cap has demonstrated that the average salary for players has risen substantially. The NZRU accepts that to a degree this will occur under the factual or counterfactual as newly promoted Provincial Unions substantially increase their player spend. However, it is clear that non-franchise base Provincial Unions have been encouraged to compete for players and invest more heavily due to the knowledge that at least some of the larger Provincial Unions will be constrained by a Salary Cap and can no longer merely "trump" the smaller Union.
29. The graph referred to at paragraph 6 above indicates the increases that have occurred in player spend which translates to significant increases in the level of average player salaries. It is the view of the NZRU that these increases will not be maintained in the absence of a Salary Cap because Provincial Unions will know that they cannot bridge the gap if there is no lid on spending by the wealthier Provincial Unions.

30. Dealing specifically with the migration of players overseas, the NZRU agrees with the comments of Provincial Unions in para 558 that the loss of players overseas “would be unlikely to be affected by the implementation of a salary cap”. Yet this view seems to be largely discounted by the Commission when it reaches its conclusion in para 568.
31. In order to make an assessment about whether **more** players will leave New Zealand as a result of a Salary Cap the different categories of players need to be considered:
- **Current All Blacks** – In 2003-2005 there have only been 4 players who have chosen to play overseas at a time when they were current All Blacks. The fact that the NZRU has a policy of only selecting New Zealand domiciled players for representative teams means that players are effectively ending or postponing their All Black career if they move overseas and this is critical to retaining players in New Zealand. These players receive the majority of their salary from the NZRU through Super 14 or All Black fees and there is a 60% discount built into the Salary Cap for their Provincial Union remuneration to recognise that they may take a lesser part in the Premier Division. Most All Blacks have received a significant increase in their incomes as a result of the settlement of the CEA. For these reasons we do not believe that any more current All Blacks will leave as a result of a Salary Cap;
  - **Former All Blacks** – as above, these players will receive the majority of their remuneration from the NZRU and there is a 60% discount built into the proposed Salary Cap to recognise that Provincial Unions may have planned on the basis these players would not be available. These players are likely to look to play overseas where they perceive that their All Black opportunities may no longer exist and/or where they are approaching the end of their career. Again, we do not see how the Salary Cap will lead to increased numbers from this category of player heading overseas;
  - **Established Super 14 Players** – again, the NZRU pays the majority of these players’ income (although not to the extent of an All Black) and the NZRU has now provided for guaranteed retainers under the Collective Employment Agreement to provide more certainty for players. These players are fulltime professionals with the experience and skill level this brings but have the added advantage of being available for the entire Premier Division due to not having potential All Blacks commitments. For this reason they will be sought after by Provincial Unions. We note also that the targeted veterans discount may apply to some of these players providing a 60% discount under the Salary Cap. Anecdotal evidence suggests that some of these players are now choosing to stay in New Zealand due to guaranteed retainers and opportunities to play created by the new competition. Again for these reasons, we do not see any more players leaving in this category due to the Salary Cap. These players tend to have All Blacks aspirations;
  - **Fringe Super 14** – these are the players who the NZRU has previously considered the most “at risk” due to the previous contracting model where if a player is not selected for Super Rugby they received no NZRU income and have to rely on their Provincial Union remuneration. A player who was previously a Super Rugby player and missed selection, in the majority of cases, would have sought a contract overseas. However, the advent of guaranteed retainers and a reduced ability to terminate NZRU contracts has meant more certainty for these players with the result that the NZRU expects greater retention. It should also be noted that the greatest value to a player

looking to move overseas is to have played Super 14 Rugby. This benefit, coupled with the significant increases over the previous few years in Provincial Union player spend, has meant that these players have greater income earning ability and certainty in New Zealand than ever before. Again, these players will be on fulltime professional contracts and will be available for the duration of the Super 14 so for this reason we do not expect any greater level of migration under the factual compared to the counterfactual;

- **Premier Division** – the Commission focuses on this group and points to overseas experience as evidence that the Salary Cap may have the greatest impact here. The NZRU accepts that it would be correct to assume that a Provincial Union will seek to contract the “star” players first followed by experienced professional players. This may, in the case of a constrained Provincial Union, mean that there is less money available to contract the next level of player. However, the NZRU points out that there is ample room under the Salary Cap of at least nine Provincial Unions to increase player payments in line with increased revenues. The NZRU Funding Review has allowed for increased grants to these Provincial Unions as well as maintaining the payment of \$10,000 for every non-NZRU contracted player. Having 14 Provincial Unions in the Premier Division also allows significantly more opportunities for players to play at the highest domestic level in New Zealand. The minimum player payment has also been lifted to \$15,000. Players who previously moved overseas to obtain a semi-professional contract are now able to do so in New Zealand with the significantly increased levels of remuneration available which has been driven by the understanding that a Salary Cap would be in place. Given these factors, the NZRU does not accept that there will be more players migrating due to the Salary Cap and believes that the reverse is true.
32. Ultimately, while there is an element of crystal ball gazing, the NZRU’s 11 years of experience of contracting professional rugby players indicates that there will be no more migration of players overseas due to the Salary Cap. Also, the CEA was entered into with both the NZRU and NZRPA expecting it to reduce player migration. Indeed, if anything we believe that the new Premier Division, even with the prospect of a Salary Cap, is seeing the return of New Zealand players from overseas due to the increased playing opportunities. We are also seeing examples of foreign players from England, Scotland, Ireland, Australia, South Africa, Japan, United States, Canada and the Pacific Islands signing with Premier Division Unions to play in the new competition on levels previously unseen resulting in an expected increase in the skill level of the team in the competition.
33. For these reasons we do not agree with the Commission’s preliminary view expressed in para 568 and, it follows, do not believe the analysis in paras 569-571 is likely to be accurate. The Salary Cap is not an isolated initiative and there are many factors at work incentivising players to stay and play or return and play in New Zealand.

### ***Reduction in Player Skill Levels***

34. The NZRU does not agree with the proposition in paras 572-578 that player skill levels will reduce as a result of a Salary Cap. See Wayne Smith’s statement in particular. In addition to the factors Mr Smith refers to, it is a requirement of inclusion in the Premier Division that Provincial Unions have an academy and a

"B" team. As well as this there are a number of requirements in relation to the coaching and support staff as well as facilities as referred to above. The NZRU has devoted significant resources to the high performance plan. All of this will continue in the event of a salary cap so the NZRU simply does not see how it is conceivable that player development efforts could be curtailed under a Salary Cap.

35. Of the most importance, is the NZRU's basic premise that a Salary Cap will result in a more competitive competition. This will be the biggest driver in player skill development as players will be playing more often at a higher level. Even with only three Provincial Unions constrained initially the NZRU is already seeing evidence of players transferring or being loaned which will raise the skill level of the Provincial Unions they are moving to and contribute significantly to this competitive balance.

### C. DISCUSSIONS WITH NZRPA RE COUNTERFACTUAL

36. The Commerce Commission noted in the Draft Determination that it was provisionally adopting the NZRU's counterfactual. The Commerce Commission also noted the discussions between the NZRPA and the NZRU which may impact on the counterfactual. The points noted in paragraph 35 are still essentially the position. The negotiations with NZRPA have not yet been concluded, further negotiations are scheduled for next week. We will update the Commerce Commission as soon as the discussions are finalized but they are likely to incorporate the same bullet points referred to in para 35.



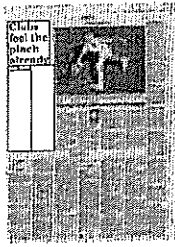
Steve Tew

3 APRIL 2006

Date

**APPENDIX 1 – PART 2**

**[Attached]**



# Clubs feel the pinch already

■ RUGBY  
TOBY ROBSON

WELLINGTON'S premier rugby clubs are feeling the double blow of the New Zealand Rugby Union's re-vamped National Provincial Championship and the ongoing drain of players overseas.

The *Dominion Post's* annual ring-around of premier coaches revealed that nearly 50 premier players had left the province or retired since the end of 2005.

At least 23 had gone to Wellington's neighbouring provinces, mainly Manawatu, Horowhenua-Kapiti and Hawke's Bay.

Fourteen players had headed abroad and 10 had either retired or were unavailable due to work commitments.

Coaches say the situation has been compounded by the increasing demands of Wellington's representative programme, including its academy.

"It's a little bit depressing," Upper Hutt coach Mark Purdy said, two weeks out from the start of the Swindale Shield. "To build on our success last year would have been fantastic, but it's just not going to be the case."

Upper Hutt won the Swindale Shield last year and reached the Jubilee Cup semifinals.

But the departure of nine frontline players has ravaged their ranks.

Frontrowers Justin Va'a and Joe Duffey (England), No 8 Damien Mei (Scotland), centre Brad Baker (Australia) and star backs Cory Aporo (Bay of Plenty) and Chris Puketapu (Christchurch) have moved on, while veterans Mike Robinson and Nathan Russell have retired.

"I'm looking at a XV and a squad of 22, but if there are any injuries we are in deep trouble."

All but two of the 10 premier clubs spoken to by *The Dominion Post* yesterday said numbers were down on last season.

Marist St Pats have also lost nine frontline players, mostly to Hawke's Bay; Ponoke have lost five and Northern United six.

Jubilee Cup champions Petone have not been hit as hard, but coach Phil Proctor said the unavailability of players was making it increasingly difficult to prepare a squad.

"It won't be till a month into the competition we will get everyone in who will be part of the premier squad.

"We are only just seeing the academy guys. It takes away those senior players that you need to get things going. You are always asking,

"Where's so and so?" It's very hard to organise things."

Proctor said the increasing absence of academy and other representative players in the pre-season was diluting the standard.

Johnsonville's John Andrews said the bigger clubs were beginning to feel the pinch that had affected smaller ones for years.

"Welcome to the real world ... I think it will level the playing field. From what I've seen so far in the pre-season, there's not a lot there in terms of depth."

Poneke coach Richard Watt said the boot was on the other foot after years of raiding by the bigger unions.

"We've taken a lot of players from the provinces over the years, we've topped off the cream of their talent, so it's swings and roundabouts."

Wellington Lions coach John Plumtree said it was hard to keep the better club players in the province.

"With the salary cap, if you have seven All Blacks and 24 Hurricanes there's not much room for fliers through club rugby.

"The players with a bit of talent, but can't make the Lions, are probably going to look around."



Though there was an increasing focus on the academy, Plumtree said there was no intention of taking them out of club rugby.

He said the domestic revamp, which has seen Manawatu and

Hawke's Bay elevated to the premier division and the second and third divisions merged, was always going to hit bigger provinces like Wellington.

But he was confident many would return and that young players would

continue to emerge. "You are always going to get the guys who love playing on Saturday and you are always going to have clubs . . . we have so much talent coaches will find other players coming through."





## Selection headaches for club rugby coaches

### Premier players heading overseas or taking NPC contracts

BY ROY WILLIAMS

AUCKLAND premier club fans should spare a thought for coaches trying to put together teams for the 2006 season starting today.

Most premier one sides from last season have been decimated, with many players moving overseas to play or being contracted to the expanded national provincial competition. Others have transferred or retired.

University, who narrowly missed making the Gallaher Shield final last season, is a typical example.

Of the 15 who played in last year's Gallaher Shield semifinal against Waitakere City, only five will be available for today's season-opener against Grammar Carlton.

"Three of our squad from last season are now playing in England," says University premier one coach Andrew Spraggon. "Three more have

been contracted by the new Tasman franchise in the NPC competition and will be playing their club rugby down there, a couple more are now in the Blues Super 14 squad and others have either moved on to other clubs or have retired.

"We had a total of 46 in our premier one squad last season and only 15 of those have returned."

University isn't alone. Gallaher Shield champion Ponsonby is similarly affected, with most of its pack from last season not returning. Prop Daniel Muller is now playing for the Cats in the Super 14 competition, hooker Jon Meredith is out with a knee injury and three others have moved to Australia.

And Waitakere City have only 12 of the 22 who were either in the starting XV or on the bench for last season's Gallaher Shield final back again.

To compound the headaches, the

expanded NPC competition starts earlier this year and club coaches won't have any of their Auckland rep players to call on from July 1.

The second round of the premier competition doesn't finish until late July, with the Gallaher Shield semi-final and final to be played after that.

"Unfortunately it's something we will have to learn to live with now that rugby's gone professional," says former All Black Bryan Williams, who is the Ponsonby club's director of rugby.

"Fortunately Ponsonby was strong in the senior one and under-21 grades last season so it will give our younger players in particular their opportunity to play premier one club rugby this year.

"If there is one positive to this it is that the premier one competition should be more even this year than is usually the case."



## Massey victims of their own success as top players snapped up

EVEN the incentive of achieving a hat-trick of titles is not enough to fill Massey coach Graham Lowe with optimism for his side's prospects in the North Harbour premier competition which starts this weekend.

Lowe ruefully reflects that Massey, the outstanding Harbour club of the past two seasons, have been victims of their own success. Because of a combination of the professional juggernaut and retirements, Massey have been devastated.

Out of the starting XV in last season's final against Takapuna only one player has been a regular at most of the early training runs.

Roger Dustow, Junior Poluleuligaga, George Pisi and Anthony Tuitavake are all involved with the Blues in the Super 14, and Andrew Whiteman has moved abroad.

The retirement of two long-serving stalwarts, inspirational captain Steve

Jackson and former Manu Samoa international Malua Tipi, who as a locking pair held the Massey pack together, has been a severe loss.

The newly structured NPC premier division has had a double impact on Massey. Not only will it have Harbour squad members missing for the last six weekends of the championship because the Air New Zealand Cup will start in July, but some players such as wing Junior Teleni have been lost to unions such as Tasman.

It would be good to have quality players, says Lowe, who would have preferred the Harbour premier title being decided in late June instead of spilling over to August and clashing with the NPC.

Lowe believes it is now time for administrators to look at where clubs sit in the game's structures.

Other clubs have also been hit hard by the even greater inroads being

made by professionalism. Takapuna, runners up to Massey in each of the past two seasons, have lost to overseas contracts, key members of last year's pack, Marty Veale, Brent Wilson, Rodney Voullaire and Patrick Flavell.

North Shore will be without Ben Meyer, Viliame Waqaseduadua and Tom Harding, Northcote without Nick Williams and Craig McGrath and Silverdale will see little or nothing of Luke McAlister and Greg Rawlinson.

As Lowe points out, it's a levelling out process which should suit the union's smaller clubs.

But there have been other disturbing signs for Harbour club rugby.

Clubs like Marist and Helensville can't field under 21 teams and Navy have opted out of the premier and premier reserve grades, meaning there will be byes this season.