

# NZRU proposed governance changes

Commentary from the independent review panel

*This paper has been reviewed by all members of the panel.*

## Scope and approach

The governance review commissioning parties, (NZ Rugby and NZ Rugby Players Association), have asked the independent review panel to consider the two proposals being presented to the Special General Meeting on 30 May. Comment is sought on alignment to the principles and recommendations of the report and if one or both proposals reflect the intent of the review.

The panel has not sought explanation or background to the proposals. We have reacted to the information as provided to those attending the Special General Meeting. The supporters of each proposal are able to explain their approaches to members at the Special General Meeting.

Some items within the proposals are either out of review scope or not covered in detail within the report. We comment on these as appropriate.

This short paper considers the three key components of the report's recommendations being the Appointment Panel and related processes, the board, and the Stakeholder Council.

## Summary of findings

**Proposal One is consistent** with the review recommendations.

**Proposal Two is not consistent** with the review recommendations.


It deviates from the review findings in several significant areas.


- A narrowing of the representation at the Stakeholder Council
- A change in its purpose to a governance advisory group
- Seeking Stakeholder Council decision making authority over the skills and competencies framework for the NZR board
- Increasing representation from the Stakeholder Council on the Appointments Panel to three, thereby creating potential deadlock on a panel of six
- Diluting the need for relevant governance experience on the Appointments Panel
- Requiring three NZR directors to have served on Provincial Union boards.


The panel's terms of reference asked it to consider whether the current governance arrangements are fit for purpose. The overwhelming response from across the rugby ecosystem, as laid out in the report, was that the status quo is not fit for purpose. Our concern is that the items noted above from the second proposal, when taken together, reinforce the status quo rather than driving the necessary change.

## Proposal comparison









































This table summarises our analysis and compares the two proposals on the basis of alignment with principles outlined in the body of this report.

Three bullets is fully consistent with the review’s recommendations 

Two bullets is broadly consistent with the review’s recommendations 

One bullet is partially consistent with the review’s recommendations 

A cross indicates inconsistency with the review’s recommendations 

Board	Proposal One	Proposal Two
Best possible candidates		
Independence		
Governance background		
Rugby knowledge		
Diversity		
Tangata whenua		
Pasifika		
<b>Appointments Panel</b>		
Independence		
Māori and Pasifika representation		
Governance background		
Rugby knowledge		
Diversity		
Chair		
Composition		
<b>Stakeholder Council</b>		
Broad perspective		
Consultative		
Independent		
Mandated functions		
Chair		
Membership		

## The principles within the panel's report

### NZR board principles

The review report highlighted these key principles.

**Best possible candidates** – nominations open to all; the process facilitates the best possible candidates with the necessary skills and competencies.

**Independence** – directors are free of sectional or representative interest and act in the best interests of the sport as a whole (see discussion below).

**Diversity** – the board should display diversity of thought and background.

**Skills** – sound commercial skill, financial acumen, ability to interact with a broad range of stakeholders. Ability to operate at a level commensurate with the business of NZR.

**Knowledge of the game** – relevant, contemporary knowledge of the game at all levels including the professional environment. (see discussion below).

**Tangata whenua** – understanding of Māori in rugby and connection to Te Ao Māori.

**Pasifika** – connection to Pasifika communities and an understanding of their role in rugby.

### Appointments panel principles

**Independence** – the panel to confirm in writing to the annual meeting its independent status.

**Māori and Pasifika perspective** – the panel shall include relevant knowledge and expertise.

**Governance background** – all panel members require a governance background including experience as an independent director of an organisation of significant size and complexity.

**Rugby knowledge** – the panel collectively will bring knowledge of the rugby ecosystem (provincial, super, school, women's, and club).

**Diversity** – gender, background and ethnicity.

**Chair** – the chair will be an independent member.

**Composition** – two independent, one NZR board appointee (not a current director) and two appointed by the Stakeholder Council.

### Stakeholder Council principles

**Broad perspective** – a cross-sector body with the best collective interests of rugby at its heart.

**Consultative** – not decision making and not a layer of governance.

**Independent** – in its composition and functioning, independent of NZR.

**Mandated functions** – appoint two members of the appointments panel, feedback on the NZR board skills and competencies framework.

**Chair** – independent and remunerated.

**Membership** – initial membership was suggested as, 3 x rugby focussed appointed at the AGM and one each nominated by, NZRPA, NZMRB, Pasifika advisory group of NZR, super clubs, Secondary Schools RU, NZ Rugby Foundation, Women in Rugby Aotearoa, Local Government NZ and Sport NZ.

## Independence.

Independence is a central and inalienable theme throughout the panel's report. The ability to operate in the best interests of the wider game is seen as a crucial. Hence, we outline the various references to and thinking on this issue.

The panel defined independence as *'four years out of the game or out of positions of influence within the game'*

The current NZR constitution defines independence as

**Clause 22 Independent** means a person who is not:

- (a) employed by; or
- (b) a member of the board of; or
- (c) an officer holder of, any of:
- (d) the NZRU or any of its subsidiaries; or
- (e) an Affiliated Body or any of its subsidiaries, provided that:
- (f) membership of the Board of the NZRU itself does not mean that a person is not Independent.
- (g) a person does not cease to be Independent by virtue of acting for, or being appointed to an office of, the NZRU, in a professional capacity; and
- (h) the Māori Representative does not cease to be Independent by virtue of being appointed to an office of the New Zealand Māori Rugby Board Incorporated.

It also notes that

**Clause 8.4 Independence:** *All Board Members must be, on election or appointment and throughout the entirety of their term as Board Members, Independent.*

And specifically in relation to appointed members

**Clause 6 c** *...will be able to, and will continue to, act and think independently of any particular stakeholder or stakeholders in New Zealand Rugby, and in the best interests of rugby across all of New Zealand'*

The legal imperative under the Incorporated Societies Act 2022 is that duties are owed to the wider entity.

Directors' duties are outlined in sections 54 through 59 of the Act. Section 61 notes that.

*...these duties are owed to the society as a whole (in this case NZR) rather than to members individually.*

This is directly analogous to obligations of directors under the Companies Act 1993. Consideration of the matters above will give strong guidance to the Appointments Panel.

## Knowledge of rugby

The report noted that all directors should have or acquire a working knowledge of rugby especially at the grassroots level. The need for rugby knowledge is outlined in the skills and competencies matrix. NZR is a large, complex, business operating internationally. It is very different from any other rugby businesses in the country.

Caution is required when considering domain (business specific) skills as the primary attribute for any candidate. There is little or no evidence to suggest that this alone drives good governance. The soft skills and competencies outlined higher up the skills and competencies framework are understood to be the key contributors to board effectiveness.

## Analysis of Proposal One

### The board

#### Best possible candidates

All positions are open to application by any person.

*This is consistent with the report*

#### Independence

All members will be independent.

Prohibits concurrent service (by all directors) on a range of affiliated and related bodies. It notes the desirability of one member in common with NZ Māori Rugby board and necessary service on the subsidiary board of NZ Rugby Commercial

Given the existing and proposed clauses in the NZR constitution and the prevailing imperative under law, the proposal is consistent other than the panel's recommended stand down period.

The generally understood benefit of a stand down period is that it provides some perspective. The individual is less mired in the day to day of the entity and is able to take a broader view. A few years, but not long enough to have lost all relevant and contemporary knowledge.

If Proposal 1 is adopted by members we would recommend that the Appointments Panel consider the candidates background and test their abilities to demonstrate a lack of bias and ability to maintain a perspective across the broad rugby eco-system.

*Noting the caveat above this is broadly consistent with the report*

#### Governance background

Nothing outlined limits seeking candidates with relevant governance background.

*This is consistent with the report*

### Rugby knowledge

Appointment is with reference to the skills and competencies framework. That makes clear the requirement for relevant rugby knowledge.

*This is consistent with the report*

### Diversity

The skills and competencies framework makes clear the commitment to diversity.

*This is consistent with the report*

### Tangata whenua

The skills and competencies framework and the proposed constitutional amendments make the commitment clear.

*This is consistent with the report*

### Pasifika

The skills and competencies makes clear the need for a collective understanding at the board table

*This is consistent with the report*

## Appointments Panel

### Independence

The recommended membership of the panel is well aligned to the report. It adds specificity to the gender requirement.

*This is consistent with the report*

### Māori and Pasifika perspective

Clause 3.2 requires due regard to ethnicity. It is specific on Māori as Tangata Whenua but silent on any specificity in regard to Pasifika. However, we note that the skills matrix for the board does emphasis the importance of a Pasifika perspective.

*This is broadly consistent with the report*

### Governance background

The wording in Clause 3.3 is taken directly from the review recommendations.

*This is consistent with the report*

### Rugby knowledge

The two Stakeholder Council members would be expected to bring specific knowledge in addition to any other experience among panel members.

*This is consistent with the report*

### Diversity

Clause 3.2 is clear and specific.

*This is consistent with the report*

### Chair

One of the independent members will be elected chair by the panel.

*This is consistent with the report*

### Composition

Two independents, one appointed by the NZR board and two by the Stakeholder Council.

*This is consistent with the report*

## Stakeholder Council

### Broad perspective

Clear broad mandate in the proposal.

*This is consistent with the report*

### Consultative

The proposal notes the role of the Council as, *to act as a forum for cross-sector conversations and networking across rugby.*

*This is consistent with the report*

### Independent

There is nothing to indicate otherwise in this proposal.

*This is consistent with the report*

### Mandated functions

Clause 2.3 outlines the specific requirements of the Council

*This is consistent with the report*

### Chair

An independent chair appointed by NZR in consultation with Council members. While silent on remuneration the proposal does state that the Council would be set up as per the report's recommendations which specifies remuneration for the chair

*This is consistent with the report*

### Membership

The panel was more specific in its membership recommendations listing, NZ Secondary Schools Rugby Union, Women in Rugby Aotearoa, Local Government NZ and Sport NZ. However, the listed members are consistent with the report and the door remains open via *other stakeholder groups as agreed upon during the co-design process.*

*This is broadly consistent with the report*

## Analysis of Proposal Two

### The board

#### Best possible candidates

All positions are open to application by any person. However, there is a requirement for at least three directors to have previously served on provincial union boards. It may be that this is the case for some successful candidates but mandating the requirement is a limiting factor on the potential pool of candidates. The logic behind the requirement is unclear.

*This is not consistent with the report*

#### Independence

All members will be independent. However, noting the comments above the panel would view this proposal as not reflecting full independence.

*This is partially consistent with the report*

#### Governance background

Again, the requirement for service on provincial union boards potentially limits the search for relevant governance skills. As noted, this service alone is not guaranteed to deliver the required skills.

*This is partially consistent with the report*

#### Rugby knowledge

Appointment is with reference to the skills and competencies framework. That makes clear the requirement for relevant rugby knowledge. However, this proposal gives strong weight to knowledge of provincial union governance.

*This is partially consistent with the report*

#### Diversity

This proposal suggest no change to the skills and competencies framework in this regard. However, again, the stipulation of three directors with provincial union governance service has the potential to limit the divert of thought around the NZR board table

*This is broadly consistent with the report*

#### Tangata whenua

The skills and competencies framework and the proposed constitutional amendments make the commitment clear. This proposal adds further specificity. However, in A2 it retains reference that *the NZR Board will be able to continue to appoint one of its Board members as an NZR representative on the NZMRB.*

*This is partially consistent with the report*

#### Pasifika

The skills and competencies makes clear the need for a collective understanding at the board table. This proposal adds further specificity

*This is consistent with the report*



## Appointments Panel

### Independence

The recommended membership of the panel varies from the panel's recommendations with three members appointed by the Stakeholder Council rather than two recommended by the panel.

*This is not consistent with the report*

### Māori and Pasifika perspective

The proposal cites knowledge and lived experiences of Māori and Pasifika and their aspirations in rugby.

*This is consistent with the report*

### Governance background

The panel's recommendation is diluted in this proposal with the suggestion that only half the panel members have director experience in organisations of relevant size and complexity.

*This is not consistent with the report*

### Rugby knowledge

The suggestions of further Council appointments and specific provincial union background add to the requirements in the skills and competencies framework.

*This is consistent with the report*

### Diversity

Clause 13 in the proposal is clear.

*This is consistent with the report*

### Chair

One of the independent members will be elected chair by the panel. This proposal specifically prohibits a casting vote for the chair. This has potential for gridlock in a panel of six people.

*This is partially consistent with the report.*

### Composition

Two independents, one appointed by the NZR board and three by the Council.

*This is not consistent with the report.*

## Stakeholder Council

### Broad perspective

It is unclear in the proposal how wide this group is intended to be. Although the option exists to add other members, as stated it falls short of a broad perspective across the full rugby eco system.

*This is partially consistent with the report*

### Consultative

The panel was clear that this Council was not intended to be part of the governance infrastructure. This proposal's concept of a governance advisory function is contrary to the review's recommendations. The name suggests it is to advise the NZR board on governance matters. This is clearly inconsistent with the principles outlined.

*This is not consistent with the report*

### Independent

The currently stated somewhat narrow perspective on membership raises some questions around full independence.

*This is partially consistent with the report*

### Mandated functions

It is of particular concern that this proposal seeks decision making power over the skills and competencies framework for the NZR board. Seeking input is sensible. But in any setting, a board must own and control its own document. The proposal seeks to appoint another member to the Appointments Panel.

*This is not consistent with the report*

### Chair

An independent chair appointed by the Council in consultation with NZR. This reverses the recommendation of proposal one. Specific on remuneration.

*This is broadly consistent with the report*

### Membership

The panel was more specific in its membership recommendations listing, NZ Secondary Schools Rugby Union, Women in Rugby Aotearoa, Local Government NZ and Sport NZ. This proposal leaves the door open to add members via agreement of the Council, but it does not list potential additions

*This is partially consistent with the report*

## Other matters

### Transition

The panel made no observations on transition arrangements. There is an acknowledged benefit arising from continuity. The panel suggested that at the first renewal date if the director has served well there should be good reason not to reappoint. At the second and final renewal date there should be strong reasons to extend the term. No director should expect renewal of term by right. Given the purpose and findings of the review all directors should be subjected to scrutiny in order to ensure a fit for purpose board as per the panel's terms of reference.

### Constitutional additions

The overarching constitution statements (as per Proposal One) are consistent with the panel's views as is the outline of the use of a recruitment company

The section on Tangata Whenua is welcome.

## Ratification of panel recommendations

All positions are appointed by the panel and ratified by the membership in an annual meeting. It should be kept firmly in mind that the membership through the annual meeting has the final say on board composition.

*Both proposals are consistent with the report.*

## Skills and competencies matrix

We have previously had the opportunity to contribute to the matrix and associated commentary. The framework outlined in Proposal One is consistent with the panel's views.

## Concluding thought from the review's terms of reference

*...it [NZR] should be run by the best possible mix of qualified directors with relevant experience. It [has] directors who can deliver the matrix of knowledge, experience and skills required to govern NZR and its subsidiaries effectively, and who, together, can engage authentically with the diversity of perspectives and interests that should inform NZR's decision making.*

15 May 2024

