

# **Report of the Play, Active Recreation and Sport Integrity Working Group**

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Integrity Working Group  
April 2022

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## Glossary

<b>DFSNZ</b>	Drug Free Sport NZ
<b>FIFA</b>	Fédération Internationale de Football Association
<b>HPSNZ</b>	High Performance Sport New Zealand
<b>IOC</b>	International Olympic Committee
<b>IWG</b>	Play, Active Recreation and Sport Integrity Working Group
<b>MCH</b>	Ministry of Culture and Heritage
<b>NCSI</b>	National Code of Sport Integrity
<b>NRO</b>	National Recreation Organisation
<b>NSO</b>	National Sport Organisation
<b>NZOC</b>	New Zealand Olympic Committee
<b>PCBU</b>	Person Conducting a Business or Undertaking – Section 17, Health and Safety at Work Act 2015
<b>RSO</b>	Regional Sports Organisation
<b>RST</b>	Regional Sports Trust
<b>Sector</b>	The sport and active recreation sectors
<b>SIA</b>	Sport Integrity Australia
<b>SIO</b>	Stand-alone Sport Integrity Organisation
<b>SIR</b>	Sport NZ Sport Integrity Review
<b>Sport NZ</b>	Sport New Zealand Ihi Aotearoa
<b>SRCMS</b>	Sport and Recreation Complaints and Mediation Service
<b>UEFA</b>	Union of European Football Associations
<b>UKAD</b>	UK Anti-Doping
<b>WADA</b>	World Anti-Doping Agency

# 1. Introduction

- 1.1 New Zealand is a country with an exceptional history in sport and recreation. Its representatives have climbed the world's highest mountains, stood at the top of the podium in countless events over multiple decades, and have won world championships across the broadest spectrum of sports and pursuits. Indeed, it is reasonable to argue that, at least in high performance sport, we have never been better placed: Tokyo 2021 was our most successful Summer Olympic Games ever in terms of total medals won and Beijing 2022 was far and away our most successful Winter Olympic Games ever.
- 1.2 And sport and recreation matter to New Zealanders. Sport New Zealand's own research indicates 92% of Kiwis believe being active helps keep them physically fit and healthy, 84% believe essential life skills are learned playing sport, 73% agree that sport and physical activity help build vibrant and strong communities, and 83% believe high-performance sport contributes to our national pride and identity.<sup>1</sup>
- 1.3 And yet, over the last decade in particular, stories about our extraordinary success across the sport and recreation sectors (for the purposes of this report, referred to collectively as the **"Sector"**) have been constantly interspersed with headlines like:
- Sex, lies, bullies and alcohol lead to wheels coming off cycling programme<sup>2</sup>
  - Cycling: Michael Heron QC returns to lead independent enquiry after death of Olympian Liv Podmore<sup>3</sup>
  - Canoe racing NZ facing athlete welfare crisis as two thirds of elite women's team quit.<sup>4</sup>
  - Te Kura Ngata-Aerengamate's mental health struggles shock NZ Rugby, Black Ferns coach Glenn Moore<sup>5</sup>
  - Gymnastics New Zealand chief admits abuse was normalised in the sport<sup>6</sup>
  - Hockey New Zealand release shock review findings into Black Sticks Women's bullying claims<sup>7</sup>
  - Football Ferns coach 'offended, humiliated or intimidated' players<sup>8</sup>
  - Former Scout leader James Morris sexually abused children for 40 years<sup>9</sup>
  - Allegations of homophobia and sexism in the world of elite bowls<sup>10</sup>
- 1.4 As these stories and countless others have unfolded, in some instances extremely serious cases of abuse, bullying, sexual harassment and even sexual assault have emerged, revealing the significant trauma some athletes and participants have endured. And even in cases where the alleged behaviour may not have been so extreme, we have still seen an almost endless flow of issues emerge across the Sector where the wellbeing of athletes and participants have been compromised.
- 1.5 Many sport and recreational organisations have in turn, had to grapple with issues they have never (at least publicly) had to deal with before. The Sector currently operates in a way where organisations are largely "self-policing" unless the matter is criminal in nature or involves potential doping. Faced with a serious allegation against an individual or member entity, organisations have applied their own rules and procedures to try to determine a way forward using their own resources. There is a very strong view across the Sector that many organisations (often despite their best intentions) have failed to cope with that responsibility.
- 1.6 Some organisations facing abuse or bullying allegations have elected to engage an independent investigator to assist them. Others have elected to undertake broader Reviews of aspects of their approach or culture. Over the last decade there have been high profile investigations/reviews into numerous sports including Gymnastics, Cycling (now in the midst of its third high profile review<sup>11</sup>), Women's Football, Women's Hockey, Women's Rugby and Canoe Racing, while National Sports Organisations such as New Zealand Rugby and New Zealand Cricket have undertaken broader reviews focussing on Diversity, Inclusion and Women in Sport.<sup>12</sup>
- 1.7 Sport New Zealand (**Sport NZ**) and High-Performance Sport New Zealand (**HPSNZ**) have also commissioned various reports in recent years focused, in whole or in part, on how the Sector is dealing with the safety of its participants and with conflict in general. This includes the:
- Review of the Sports Tribunal by Don Mackinnon – 2015; and
  - Review of Elite Athletes' Rights and Welfare by Steve Cottrell - 2018

1 Sport Integrity Review, Findings and Recommendations, September 2019, Sport NZ

2 Stephen Hewson, Radio NZ Sport, 15/10/2018

3 Grant Chapman, Newshub, 21/09/21

4 Dana Johansson and Zoe George, Stuff, 30/8/20

5 Joseph Pearson, Stuff, 7/12/21

6 <https://www.gymnastsforchange.com/blogs/gymnastics-new-zealand-chief-abuse-normalised>

7 NZ Herald, 25/2/19

8 Radio NZ Sport, 3/10/18

9 Edward Gray, Stuff, 10/7/20

10 Zoe George, Stuff, 11/78/21

11 Two led by Michael Heron QC and one by Don Mackinnon for Cycling NZ and the NZOC

12 It is acknowledged that many of these reviews have been extremely valuable for the Sports which commissioned them and have driven very positive changes.

- 1.8 Sport NZ also conducted its own comprehensive review of similar matters across the Sector, and its findings and recommendations were released in September 2019. That “Sport Integrity Review”, perhaps for the first time in a New Zealand context, expressly classified the issues it addressed as issues of *integrity*, borrowing from the definition of “sport integrity” being used at the time by the Australian Sports Commission.<sup>13</sup>
- 1.9 The Sport Integrity Review contained 22 recommendations designed to address a series of key issues identified by the Sector. The recommendations in turn contained a series of proposed interventions and improvements to the institutions and mechanisms that already exist in the Sector, alongside new initiatives. One of those new initiatives was to investigate whether a sports mediation service should be established.
- 1.10 That in turn led to the commissioning of Phillipa Muir’s and John Rooney’s “Feasibility Study for a Complaints Management and/or Dispute Resolution Service for NZ Sport”, whose report was issued in September 2020. Ms Muir and Mr Rooney recommended the creation of a government-funded Sport and Recreation Mediation Service and the appointment of a Sports Ombudsman.<sup>14</sup> In its concluding section, the report also recommended that in light of the ongoing member protection /welfare claims by athletes, a working group be established to consider, amongst other things, a government-funded sport integrity unit that “*would develop policies, provide education/resources, oversee the Sports Ombudsman and the SRMS and would be aligned with international human rights and integrity standards in sport.*”
- 1.11 On receipt of that report, Sport New Zealand established the Sport and Recreation Complaints and Mediation Service (**SRCMS**). As outlined on its own website<sup>15</sup>, “*the Sport and Recreation Complaints and Mediation Service is a complaints and mediation service for sport and recreation across Aotearoa New Zealand. The service is operated by Immediation New Zealand Limited, which has been contracted by Sport NZ to run the service independent of any sporting bodies, clubs and organisations. Its purpose is to ensure those with issues related to sport and recreation in Aotearoa New Zealand have a place to air their complaints and have them resolved fairly. The service is free and confidential.*”
- 1.12 And Sport NZ also decided to establish this Integrity Working Group (the **IWG**) to consider the creation of a Sport Integrity Unit.
- 1.13 Terms of Reference were promulgated for this project and these are attached as **Appendix 1**. The Sport NZ Board (after consultation with the Sector) selected the members of the IWG, and a list of those members and short biographies are attached as Appendix 2. During the course of the project, two members of the IWG withdrew after they were appointed to the Sport NZ Board. This is noted in **Appendix 2**. The principal author of this report was honoured to be asked to Chair the IWG.<sup>16</sup>
- 1.14 It is very important to understand, at the outset, the clear purpose of this project. As expressly outlined in the terms of reference, the purpose of the IWG was to “*evaluate a range of options and recommend to the Sport NZ Board and Minister what is considered the **most appropriate institutional arrangement(s)/structure(s) to manage all the various integrity elements across the system and accommodate the 22 recommendations from the Integrity Review once implemented.** This will require an assessment of the current institutional arrangements involving Drug Free Sport NZ, the Sports Tribunal, the integrity function within Sport NZ and any independent services funded by Sport NZ such as the Sport and Recreation Mediation Service*”
- 1.15 The IWG was also required to monitor and support the progress being made against the 22 Review recommendations and to monitor the progress of the SRCMS over its initial two-year operating period, to help inform any areas for refinement and improvement. The IWG did assess, from time to time during the project, progress against the 22 recommendations and a report on that progress is attached as **Appendix 3**. The IWG also twice met with the entity contracted to provide the SRCMS and its initial progress is commented on throughout the body of this report.
- 1.16 Fundamentally, however, the principal role of the IWG has been to review our existing institutional arrangements and structures and to make recommendations for refinements or changes to ensure Aotearoa/New Zealand’s systems and institutions are “fit for purpose” to manage the various aspects of integrity across the Sector. And in doing so, a particular focus needed to be on ensuring the successful accommodation of the Integrity Review’s 22 recommendations.

<sup>13</sup> “a sport that displays integrity can often be recognised as honest and genuine in its dealings, championing good sportsmanship, providing safe, fair and inclusive environments for all involved. It will be also expected to play by the rules that are defined by its code. A sport that generally displays integrity has a level of community confidence, trust and support behind them” [https://www.ausport.gov.au/supporting/integrity\\_in\\_sport](https://www.ausport.gov.au/supporting/integrity_in_sport)

<sup>14</sup> These recommendations are commented on later in this report.

<sup>15</sup> Sport and Recreation Complaints and Mediation Service New Zealand ([sportsmediationservice.org.nz](https://sportsmediationservice.org.nz))

<sup>16</sup> As Chair, I would like to acknowledge the outstanding contribution of all members of the IWG, each of whom brought considerable experience and expertise to the issues we were considering.

- 1.17 This approach can be contrasted with, for example, the extremely comprehensive report into the Review of Australia's Sports Integrity Arrangements compiled by the Hon. James Wood, Ray Murrphy and New Zealand's own David Howman – the terms of reference for which required the panel to, amongst other things, examine the current national and international sports integrity threat environment, to examine future challenges and to assess the adequacy of Australia's system at multiple levels, with a particular focus on doping, match fixing and corruption.
- 1.18 This review is more singularly focussed on our systems and institutions – although in making recommendations to ensure New Zealand's integrity systems and institutions are "*fit for purpose*", we have, inevitably, played close attention to international trends and have carefully considered where the greatest threats lie to the ongoing integrity of sport in this country.
- 1.19 Two other preliminary points are worth noting. This report focuses on the active recreation and sport sectors. However, some aspects of the report will also have relevance for the play sector and those linkages will need to be explored further as this project develops further.
- 1.20 Equally, this was not a review of how the education system currently deals with integrity issues arising from sport and active recreation provided in the school context. We did meet with representatives of New Zealand Secondary School Sport NZ to better understand the challenges faced within school sport and active recreation, but the IWG took the view that the willingness of the education sector to utilise the systems and institutions that deal within integrity across the Sector is best addressed in the next stage of this project. Nevertheless, the importance of our rangatahi and tamariki being able to safely participate in sport and recreation is obviously just as real in the school environment as outside it, and later in this report, we do address the value a new integrity framework could add to school sport and the critical need for future work to be undertaken in this area.

## 2. Methodology

- 2.1 The approach adopted in completing this review is largely set out in the terms of reference. As the terms indicate, significant consultation and engagement with the Sector was always going to be a key part of the project.
- 2.2 Obviously, this needed to include Drug Free Sport NZ (**DFSNZ**), the Sports Tribunal, Sport NZ, the SRCMS and lead agencies such as the New Zealand Olympic Committee (**NZOC**) and HPSNZ. But the IWG also needed the input of National Sports Organisations (**NSOs**), National Recreation Organisations (**NROs**), representatives of athletes and participants, and input from individuals who had survived an integrity issue and were prepared to share their experiences. The IWG also ensured we engaged on a much wider basis than just the Sport sector including with the Race Relations Commissioner, Human Rights Commission and the Children's Commissioner
- 2.3 The IWG met with multiple groups and the feedback we received is summarised in section 7 of this Report. The IWG, through Sport NZ, also tabled a general invitation to affected / interested parties across the Sector to contact us if they wished to make a submission. The IWG is confident the consultation process we adopted was extensive.
- 2.4 Since many of the Sector integrity issues being experienced in New Zealand mirror those around the globe, the IWG also took time to hear from subject matter experts in the areas of international human rights and international integrity trends.
- 2.5 The IWG also endeavoured to receive input from a range of public sector agencies dealing with children's rights, disabled people's rights and discrimination in its various forms.
- 2.6 Importantly, the IWG also ensured it received input from Māori to ensure its recommendations upheld the mana of Te Tiriti o Waitangi / Treaty of Waitangi and the principles of Partnership, Protection and Participation. To that end, we have endeavoured to recommend a system that has the flexibility to offer a Te Ao Māori strategy – including scope to introduce processes designed by Māori for Māori to resolve integrity-related disputes. Developing the detail for these processes will be a key part of the next part of this project - and will require the involvement of subject matter experts particularly in tikanga, kawa (protocols) and cultural practices.
- 2.7 A list of all the people and organisations with whom we consulted in 2021 are set out in **Appendix 4**.
- 2.8 Having consulted widely and having gathered a great deal of information, the IWG settled on a definition of integrity in sport that it considered appropriate for Aotearoa/New Zealand. It then set about defining a series of design objectives, design principles and functions that would need to be present in any fit-for-purpose Sector integrity system.
- 2.9 Three potential options emerged which could loosely be described as:
- a) status quo
  - b) an evolutionary model; and
  - c) a new stand-alone model,
- and the effectiveness of each of these was assessed against a number of hypothetical scenarios involving challenging but realistic integrity issues. From this process, the IWG reduced its working models to two options.
- 2.10 In accordance with the terms of reference, these two options were put through a feasibility testing process. The IWG commissioned the consultancy firm MartinJenkins, to undertake this exercise on its behalf<sup>17</sup>. At the same time, there was further in-depth consultation with the Sector, particularly with those institutions that would be directly affected by the changes proposed by these two options.
- 2.11 A list of the organisations and people consulted within this second round of consultation is set out at **Appendix 5**. The feedback from this second round of consultation as well as the core findings of MartinJenkins are referred to in sections 11 and 12 of this report.
- 2.12 This report was completed at the end of that process. The report has been tabled later than initially scheduled. Unfortunately, the various COVID-19 related lockdowns throughout 2021 delayed several consultation meetings and also prevented the IWG coming together in person as often as was desirable. There were also unavoidable resourcing delays due to support staff needing to focus on other events within the Sector, which had to take priority.<sup>18</sup>
- 2.13 Throughout this process, the IWG received excellent secretarial support from various members of Sport NZ. Their professionalism, quality of work and commitment to integrity across the sector was greatly appreciated by the IWG.
- 2.14 Ultimately, the IWG has delivered a report containing core recommendations it unanimously stands by.<sup>19</sup> We believe that if the recommendations in this report are implemented, Aotearoa/New Zealand will be able to create a play, active recreation and sport sector that genuinely prioritises the safety and wellbeing of athletes and participants, and which does as much as it possibly can to ensure sport is clean, ethical, and untainted by corruption. If as a nation we get this right, we have the opportunity to lead the world by providing sport and recreation on a strong foundation of integrity – and so create a legacy that future generations will benefit from.

<sup>17</sup> The IWG is very appreciative of the skilled contribution of Joanna Collinge and Ben Guernier from MartinJenkins

<sup>18</sup> This included the tragic passing of New Zealand cyclist Olivia Podmore and the subsequent establishment of a separate review panel.

<sup>19</sup> As noted later in this report, there were aspects of the detailed design where members of the IWG held different perspectives – these important issues will need to be addressed in the next phase of development.

### 3. Executive Summary

- 3.1 This project represents the culmination of multiple inquiries and reviews into various sports and sporting-related incidents over the last decade, many of which involved aspects of athlete/participant safety or wellbeing. The most recent of these was Phillipa Muir and John Rooney's *"Feasibility Study for a Complaints Management and/or Dispute Resolution Service for NZ Sport"* issued in September 2020.
- 3.2 Ms Muir and Mr Rooney supported the creation of a government funded Sport and Recreation Mediation Service and recommended the appointment of a Sports Ombudsman. In its concluding section, the report also recommended that a working group be established to consider, amongst other things, a government funded sport integrity unit that *"would develop policies, provide education/resources, oversee the Sports Ombudsman and the SRMS and would be aligned with international human rights and integrity standards in sport."*
- 3.3 In December 2020, Sport NZ announced the establishment of this Integrity Working Group (IWG). The IWG was given a clear mandate in its terms of reference – to *"evaluate a range of options and recommend to the Sport NZ Board and Minister what is considered the **most appropriate institutional arrangement(s)/structure(s) to manage all the various integrity elements across the system"***. Those institutional arrangement(s)/structure also needed to accommodate the 22 recommendations contained in Sport NZ's own Integrity Review (**SIR**) released in September 2019.
- 3.4 The terms of reference also made it clear that "integrity" in this context meant more than simply doping and match-fixing; it also needed to consider participant safety and how inappropriate behaviour is addressed across the play, active recreation and sport sector (the Sector). As such, one of the first tasks of the IWG was to agree on a definition of integrity in the context of the Sector. Based on the feedback received and research undertaken, we have viewed integrity through the following lens:

***"The integrity of the New Zealand play, active recreation and sport system encompasses personal, organisational and competition integrity, and ensures the safety, security, wellbeing and inclusion of all participants in a manner consistent with internationally recognised human rights and the three principles of Te Tiriti o Waitangi, participation, protection and partnership.***

***It rejects competition manipulation, discrimination, harassment, cheating, violence, abuse, corruption, doping and any other crime or fraud and promotes fairness, transparency, accountability and a right for participants to be heard"***

- 3.5 It is important to note this definition does not extend to what might generally be called "on-field" issues – sport must still govern sport and determine its own rules and processes.
- 3.6 Throughout 2021, the IWG consulted extensively with the Sector. We were regularly told that our systems and institutions to deal with personal, organisational and competition integrity are not fit for purpose. Common themes included:
- a lack of trust in the capability of many national, regional and club organisations to deal objectively with integrity issues and to support those who have experienced trauma
  - a lack of trust in Sport NZ's ability to act objectively and independently in addressing integrity issues given its close working relationships with national sports organisations, and its role as the main funder of the Sector. Athlete/participant groups also spoke of a reluctance to raise issues with Sport NZ fearing that doing so could ultimately hurt the funding upon which their sport heavily relies
  - that the system is confusing, with multiple layers, little coherence, and hugely divergent practices
  - a significant gap in terms of how we are dealing with competition manipulation with a lack of rules, education or focus and with no "ownership" of this space by any one agency; and
  - there should be minimum standards of conduct and behaviour applicable to every Sector participant.
- 3.7 At the same time, there was recognition by some that in the last 2 years or so, Sport NZ has produced some excellent integrity themed resources and training modules that are getting some buy-in from the Sector. There was also recognition that the SRCMS, whilst still relatively new to the Sector, is led by some very experienced people and is likely to add considerable value to the Sector. This was caveated to some extent by a reasonably commonly expressed view that the SRCMS was still contracted to Sport NZ, and some felt this still limited its independence.

3.8 Consistent with good organisational design practice, the IWG (with the aid of consultants MartinJenkins) then developed a series of design objectives and principles to underpin the core functions of an integrity system. While these are set out in detail in the body of the report (and are analysed more extensively in the Feasibility Report provided by MartinJenkins) the key design objectives are worth emphasising:

**Design objectives**

- a) Supports an **athlete and participant centred** approach, including athlete and participant voice, and facilitates trust by accommodating the varying needs of participants in the system.
- b) Provides a **simple, accessible system designed for Aotearoa/New Zealand** that covers all dimensions of integrity across the play, active recreation and sport system.
- c) Enables a **more consistent interpretation and application of integrity standards** across the system, meeting national and international obligations.
- d) Achieves **actual and perceived independence and independent decision-making** which fosters the support, confidence and trust of participants in the system.
- e) Provides a **cost-effective solution** by protecting against and resolving integrity issues effectively and efficiently, and with an establishment cost proportionate to the scale of the issues it is seeking to resolve.

3.9 The IWG assessed various potential models against these design objectives. It concluded that the current system (the status quo) does not deliver against the design objectives and ultimately settled on two potential options: an evolutionary model (option A) and a new stand-alone model (option B) for further analysis.

3.10 Both options are predicated on the introduction of a National Code of Sport Integrity (**NCSI**)<sup>20</sup>, which will set minimum standards across the Sector in a range of areas including child safeguarding, member protection, bullying and harassment, and which will also provide dispute resolution options. This document becomes the cornerstone of the system.

3.11 Both options are also predicated on the signing of the Macolin Convention<sup>21</sup> and the adoption of new standards, guidance and advice in relation to competition manipulation.

3.12 Option A is more an evolutionary model: it recognises that change is necessary, but builds on the existing system, particularly the changes that have emerged since the SIR and the implementation of many of its 22 recommendations. The underlying rationale is that the current system can be adapted to deliver the type of safe, fair and inclusive system that we need in Aotearoa/New Zealand (including greater independence through new governance and structural arrangements and separately appropriated funding), that good progress has been made in implementing the various SIR recommendations, that the next step is the initiation of the Sport NZ/HPSNZ Athlete Voice project, and that the SRCMS is already proving to be a valuable tool and needs time to make a more material difference to the Sector.

3.13 Option B, in contrast, represents more significant change. Under this option, a new stand-alone Integrity Organisation would be created (**SIO**) which would operate quite independently of Sport NZ and HPSNZ and which DFSNZ would fold into, alongside the functions within Sport NZ currently focused on integrity. The underlying rationale for this option is that it is not possible to achieve the design objectives and principles and genuinely raise the standard of integrity across the Sector unless we create an independent agency with a singular focus on advocating for the safety and the fundamental human rights of athletes and participants - and that agency cannot be the same agency that funds the Sector.

3.14 The new SIO would be strongly athlete/participant centred, would have a significant focus on education and on projects that prevent harm occurring - but would provide a comprehensive dispute resolution function offering multiple options and avenues, including options designed by and for participants, including by and for Māori. The SIO would triage integrity complaints and disputes but could contract out some of its dispute resolution services (such as mediation and/or disciplinary panel) to a third-party provider as occurs with the SRCMS.

3.15 This option also acknowledges there are some sports and recreation organisations that have developed comprehensive approaches to various integrity issues and a national solution should not be imposed on them; instead an accreditation type system will be needed in those cases to allow organisations who are already dealing effectively with integrity issues to continue to do so.

3.16 The IWG consulted again with the Sector about these two options and received overwhelming support for Option B. That feedback was largely consistent with the views of all members of the IWG and after careful consideration, the IWG unanimously agreed to recommend Option B as the most appropriate suite of institutional arrangements and structures for managing integrity across the Sector.

<sup>20</sup> This is simply a working title and may change over time.

<sup>21</sup> The Convention on the Manipulation of Sports Competitions signed at Macolin, Switzerland in 2014 by the member States of the Council of Europe and several non-member states. The Convention entered into force on 1 September 2019. It has been ratified by Greece, Italy, Norway, Portugal, the Republic of Moldova, Switzerland and Ukraine. It has been signed by 30 other European States, as well as by Australia and Morocco.

- 3.17 The IWG believes Option B provides a far simpler, more accessible system for all levels of the Sector, from recreational community participants through to elite high-performance athletes; it is a system that, if established correctly, can be truly athlete and participant centred and therefore trusted; it provides the actual and perceived independence that is essential to any strong integrity system; it allows Aotearoa/New Zealand to introduce and consistently apply integrity standards and if established correctly, can provide a cost-effective solution.<sup>22</sup>
- 3.18 Option B would be world leading: while several countries have adopted a national code based on principles of integrity, sometimes supported by nationally funded dispute resolution mechanisms, none of the international models we have examined seek to provide a solution open to everyone, from the community amateur to the elite athlete. Yet both amateur and elite athletes can sometimes face hugely challenging integrity issues, and both deserve a system that adequately addresses their needs. We believe Option B can do that.
- 3.19 Option B does not abrogate sector organisations from their fundamental responsibility to keep their people safe; rather it provides a system that will help sector organisations meet their responsibilities, and where problems arise, offers an independent mechanism for resolution.
- 3.20 If this recommendation is adopted, the IWG also recommends a Transition Board be established to ensure the project continues to progress effectively while the Policy/legislative processes are worked through. During this period, it will be of fundamental importance that athletes/participants and survivors of integrity breaches are at the core of any design work, and also that there is strong Māori representation, particularly as alternative resolution processes are explored.
- 3.21 It is recommended that the Transition Board also opens dialogue with the Ministry of Education and New Zealand Secondary School Sport to assess ways in which this new integrity framework could assist the education sector when dealing with integrity issues in sport.

<sup>22</sup> The cost of both options is explored in detail in the feasibility report of MartinJenkins, attached as Appendix 8

## 4. Integrity – A Working Definition

- 4.1 The terms of reference for the IWG did not specifically define what was meant by “integrity”. However, the terms of reference do specifically note, amongst other things, that:
- Sport NZ is committed to upholding the mana of Te Tiriti o Waitangi / Treaty of Waitangi and the principles of Partnership, Protection and Participation.
  - There is an obligation to protect the integrity of the play, active recreation and sports system by ensuring all participants within the system “are safe and competing on a level playing field.”
  - In the Sport Integrity Review conducted by Sport NZ and High-Performance Sport NZ in 2018 (**SIR**)<sup>23</sup>, themes to emerge from the sector included anti-doping, match-fixing and corruption as well as themes such as child safeguarding, member protection and organisational culture.
  - In the subsequent feasibility study led by Phillipa Muir and John Rooney of Simpson Grierson, the objective was to assess a proposed mechanism to manage complaints about “inappropriate behaviour” which was defined as including “harassment, bullying, abuse, discrimination, inappropriate conduct arising from abuse of power, other unethical conduct, unfair decision-making/breaches of natural justice”<sup>24</sup> and
  - Ms Muir and Mr Rooney’s feasibility report subsequently recommended, amongst other things, the creation of a working group to consider the creation of a Sport Integrity Unit.
- 4.2 And, as noted earlier, the terms of reference for this project do specify that the purpose of the IWG is to evaluate and recommend what it considers is the most appropriate institutional arrangements and structures “to manage **all the various integrity elements** across the system” and accommodate the 22 recommendations from the SIR.
- 4.3 With that background in mind, the IWG took the view, from the outset, that its mandate to evaluate the institutional arrangements and structures within Aotearoa/ New Zealand to adequately deal with issues of integrity had to be viewed in a broad setting. That included not only what might be considered the more “traditional” areas where the integrity of sport has, from time to time, been compromised (such as doping, match-fixing and corruption) but also the type of inappropriate behaviour specifically covered by the Muir/Rooney Feasibility Report.
- 4.4 The broadness of the IWG’s mandate was also confirmed in discussions with the Minister for Sport and Recreation.
- 4.5 Because of this, the IWG considered it important to develop, at an early stage in its deliberations, a working definition of Integrity on which to base its considerations.
- 4.6 We examined the use of the word in an international sporting context and noted that in Australia a number of definitions have been articulated in recent years. The Australian Sports Commission (now Sport Australia) used the following:
- A sport that displays integrity can often be recognised as honest and genuine in its dealings, championing good sportsmanship, providing safe, fair and inclusive environments for all involved. It will be also expected to ‘play by the rules’ that are defined by its code. A sport that generally displays integrity has a level of community confidence, trust and support behind them.*
- 4.7 The National Integrity of Sport Unit (now part of Sport Integrity Australia) used the following definition of integrity:
- the manifestation of the ethics and values which promote community confidence in sports, including fair and honest performances and outcomes, unaffected by illegitimate enhancements or external interests; and*
- positive conduct by athletes, administrators, officials, supporters and other stakeholders, on and off the sporting arena, which enhances the reputation and standing of the sporting contest and of sport overall.*
- 4.8 Section 4 of the Sport Integrity Australia Act 2020, which established Sport Integrity Australia, defines sport integrity as:
- the manifestation of the ethics and values that promote community confidence in sport.*
- 4.9 The Act goes on to state that threats to the integrity of sport include the following:
- (a) *the manipulation of sporting competitions; and*
  - (b) *the use of drugs or doping methods in sport; and*
  - (c) *the abuse of children and other persons in a sporting environment; and*
  - (d) *the failure to protect members of sporting organisations, and other persons in a sporting environment, from bullying, intimidation, discrimination or harassment.*
- 4.10 In the United Kingdom, in 2019 UK Anti-Doping (**UKAD**) released a report mapping the current integrity landscape in the United Kingdom and making several recommendations relating to “the future, integrated development of sport integrity as a key element within the scope of good governance of sport within the UK.”<sup>25</sup>

<sup>23</sup> Report published in 2019

<sup>24</sup> Interestingly, match fixing, doping, betting and corruption were out of scope for that study

<sup>25</sup> UKAD, Integrity in Sport- Mapping the UK Landscape - <https://www.ukad.org.uk/sites/default/files/2020-08/UKAD%20Integrity%20In%20Sport%20Report.pdf>

- 4.11 UKAD advanced the view that integrity in sport needed to be viewed through three separate pillars, that of personal integrity, competition integrity and organisational integrity. UKAD's report did not include a definition of integrity; however, it identified a "pressing need" to agree upon the conceptual boundaries of sport integrity and recommended that a definition be provided for the benefit of sport stakeholders, based on this three-pillar approach.
- 4.12 The Council of Europe has a similar approach to UKAD. It has identified three pillars to sport integrity<sup>26</sup>:
- a) *Integrity of people - Including safeguards from violence and abuse and the safety and security of people*
  - b) *Integrity of competition which refers to the manipulation of competition and to the fight against doping*
  - c) *Integrity of organisations which includes good governance*
- 4.13 The Council of Europe has also proposed a holistic definition of integrity, namely:
- The integrity of sport is a precondition to protect and maximise the contribution of sport to sustainable human and social development.*
- 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 of fraud related to sport; promote transparency and accountability in the governance of sport; and foster respect for internationally recognised human rights.*
- 4.14 The importance of human rights in the context of integrity in sport has been recognised by numerous bodies in recent times. In reality, many human rights and freedoms enshrined in international instruments have relevance to our play, active recreation and sport system in one way or another. These include, for example, the Right to Equality, the Right to Freedom from Discrimination, the Right to Life, Liberty and Personal Security, the Right not to be subject to Torture, Cruel/Inhuman or Degrading Treatment or Punishment, the Right to Enjoy Favourable Conditions at Work, the Right to Freedom of Opinion and Expression, the Right to Freedom of Movement, the Right of Access to Justice, the Right of Peaceful Assembly and Association, and the Right to form and join Trade Unions and the Right to Strike.
- 4.15 Many of the World's largest sporting bodies have, in recent years, openly acknowledged the importance of human rights in protecting the integrity of their sport. This includes FIFA, the IOC, the Commonwealth Games Federation and UEFA. Essentially, those organisations have concluded that it is a minimum requirement that the integrity of sport has to be grounded in respect for internationally recognised human rights. Indeed, the IOC Charter goes so far as to say the practice of sport is, itself, a human right.
- 4.16 The growing recognition of human rights is evident in Europe where the European Court of Human Rights has heard an increasing number of cases over the last decade where breaches of the European Convention on Human Rights were alleged in a sporting context. These cases have included alleged breaches of the right to life, the right to liberty and security, the right to a fair trial, freedom of thought, conscience and religion and freedom of expression, among others.
- 4.17 It is not the purpose of this report to outline all of the internationally recognised human rights that impact on issues of integrity within the sport and recreation sector - but the IWG is of the view that any working definition of integrity in the Sector must recognize that human rights sit at the core of integrity in sport, play and active recreation, alongside (in a New Zealand context) Te Tiriti o Waitangi.
- 4.18 Another clear trend is to view integrity in the context of athlete/participant safety. Fundamentally, any person playing or participating in sport or active recreation should be able to do so safely, free from the risk of abuse, harassment and unauthorised violence. However, while that is unquestionably one core aspect of integrity in sport, the IWG was of the view its work needed to be broader, so that not just personal integrity/personal safety was considered but also the integrity of the organisations and competitions that make up the Sector.
- 4.19 For all of these reasons, the IWG adopted the following definition (which in some parts, unashamedly mirrors the approach favoured by the Council of Europe) but which includes a strong Aotearoa/New Zealand context:
- "The integrity of the New Zealand play, active recreation and sport system encompasses personal, organisational and competition integrity, and ensures the safety, security, wellbeing and inclusion of all participants in a manner consistent with internationally recognised human rights and the three principles of Te Tiriti o Waitangi, participation, protection and partnership.***
- It rejects competition manipulation, discrimination, harassment, cheating, violence, abuse, corruption, doping and any other crime or fraud and promotes fairness, transparency, accountability and a right for participants to be heard"***
- 4.20 The scope of this definition is important: integrity must exist at the personal level, the organisational level, and the competition level; it must be founded on internationally recognised human rights and Te Tiriti; and it must specifically reject certain inappropriate behaviours and promote certain positive behaviours, including the right of participants to be heard.

23 Report published in 2019

24 Interestingly, match fixing, doping, betting and corruption were out of scope for that study

25 UKAD, Integrity in Sport- Mapping the UK Landscape - <https://www.ukad.org.uk/sites/default/files/2020-08/UKAD%20Integrity%20In%20Sport%20Report.pdf>

26 Guidelines on Sport Integrity – CoE <https://rm.coe.int/sports-integrity-guidelines-action3-kazan-action>.

## 5. The Current System

- 5.1 Having defined “integrity” for the purposes of this review, including both what it encompasses and also what it rejects, it was necessary to consider Aotearoa/New Zealand’s current integrity institutional arrangements against that definition.<sup>27</sup>
- 5.2 There are two overarching points to acknowledge with our current system. The first is that organisations at almost every level throughout the Sector (be it at community, regional or national level) owe a duty to keep their participants safe. That duty will, in many instances, derive from the Health and Safety at Work Act 2015. Section 3(1) of the Act states that the Act’s main purpose is to provide a balanced framework to secure the health and safety of workers and workplaces by “protecting workers and other persons against harm to their health, safety, and wellbeing by eliminating or minimising risks arising from work ...”
- 5.3 The Act places very significant responsibilities on a person conducting a business or undertaking (**PCBU**). In particular, a PCBU has the primary duty of care to keep its workers safe. It must do this by ensuring, so far as reasonably practicable, the health and safety of workers who work for the PCBU while those workers are at work. Just as importantly, the officers in charge of the PCBU are legally required to exercise all due diligence to ensure that the PCBU complies with its duties and obligations under the Act.
- 5.4 It is also now well established that protecting the mental health and wellbeing of workers is no less important under the legislation than their physical health and safety.
- 5.5 These are obviously extremely important legal obligations which, quite rightly come with significant sanctions if they are ignored.
- 5.6 As for how the Act applies across the Sector:
- Many high-performance athletes and coaches operating in their training environment are likely to be classified as workers under the legislation.
  - And while volunteer athletes, coaches and other participants are not likely to be deemed workers, a PCBU must also ensure, so far as is reasonably practicable, that the health and safety of other people is not put at risk from work carried out as part of their business or undertaking.
  - Many organisations across the Sector will be considered a PCBU and the directors/managers of that organisation will be the officers of the PCBU.
- 5.7 These obligations are statutory, and no integrity system can (or should) attempt to remove these obligations or pass them on to another party. However, under our current system, there are a range of bodies working in various areas related to sport integrity that seek to assist Sector organisations to meet those responsibilities.
- 5.8 The second overarching point with our current system is that it is the responsibility of each Sector organisation to develop its own rules, policies, and procedures to educate and seek to prevent breaches of integrity, to receive complaints about them and to resolve them. Each organisation has its own system. In some instances, that system is established to comply with obligations to the organisation’s membership of an international organisation or the national organisation. In others, the system may have been developed in consultation with a Players Association. But many organisations have designed and implemented their own system.
- 5.9 In each case, the organisation itself has to find/allocate resources (financial and human) with the necessary expertise/capability to prevent harm, develop its rules, policies and procedures across the range of different integrity issues (each with a differing system) and properly implement and enforce them.<sup>28</sup>
- 5.10 In detailing our current system, we are conscious that the SIR released by Sport NZ in September 2019 recommended a number of initial changes to those institutional arrangements, several of which have since been implemented. Set out in **Appendix 6** is a table summarising our institutional arrangements to deal with issues of sport integrity prior to the release of the SIR while **Appendix 7** contains a table setting out the system after implementation of the SIR recommendations.
- 5.11 As indicated by those tables, integrity has, to date, generally been viewed under five principal headings:
- anti-doping
  - match-fixing
  - corruption
  - member protection; and
  - child safeguarding.
- 5.12 In terms of **anti-doping**, anti-doping policy is set through the World Anti-Doping Code adopted by **WADA**. DFSNZ is an Independent Crown Entity recognised under the Sports Anti-Doping Act 2006 as having statutory responsibility to implement and enforce the Code.
- 5.13 DFSNZ operates as the regulator of the Code and is responsible for providing anti-doping education to the Sector and enforcing the Code. It does this through a testing and investigation regime, with cases brought to the Sports Tribunal for determination.<sup>29</sup>

<sup>27</sup> This section does not contain a comprehensive list of every entity or agency which touches on issues of integrity across the Sector. Organisations such as NZOC, for example, play a leading and extremely important role in promoting integrity for Olympic Sports.

<sup>28</sup> Albeit, as detailed later in this section, there is significant support and resources available through Sport NZ to assist many Sector organisations in this regard.

<sup>29</sup> The exception being for anti-doping cases brought before the NZ Rugby Judicial Committee

- 5.14 The Sports Tribunal is also created through the Sports Anti-Doping Act 2006. This is something of an oddity in that the Tribunal's statutory functions are broader than just anti-doping, including the ability to deal with other sports-related disputes and appeals, subject to the constitution, rules or regulations of the sports body in question.
- 5.15 In terms of **match-fixing**, in 2014, the Crimes Act 1961 was amended to make certain actions which can loosely be described as match-fixing a criminal offence. Section 240A clarifies that certain "match-fixing" behaviour is a form of deception. Deception, in this context, is any act or omission that is done or omitted to be done with intent to influence a betting outcome by manipulating the overall result of an activity or any event within an activity. This section applies to sporting competitions, games, matches, races, and rallies involving human participants (whether or not they also involve equipment, horses, vehicles, or vessels) and dog-racing. Anyone convicted under this section is liable to a maximum penalty of seven years' imprisonment.
- 5.16 However, while the Ministry of Justice administers the Crimes Act, and the New Zealand Police enforces that legislation, there is no body equivalent to DFSNZ specifically responsible for promoting compliance with Section 240A nor is there a specific code or set of rules for competition manipulation that must be complied with across the Sector.
- 5.17 Sport NZ advised us that, at the time of the introduction of the new legislation, it worked with many NSOs (including through the development of bespoke educational resources) to provide information to them to assist with adoption and understanding of the new legislation. And in terms of rules, policies and guidelines, Sport NZ has an online Integrity Guidance Portal which is available to the entire Sector. This contains a template Match-Fixing Policy as well as access to a free online Competition Manipulation Module. This module is designed for sub-elite level participants as they are perceived by Sport NZ to be particularly vulnerable.
- 5.18 In addition to Sport NZ's module, larger NSOs like Rugby, Football and Cricket have their own match-fixing education programmes, developed in close consultation with and, in some instances, delivered by the Players' Associations in those sports. That is done because, in the view of some of those NSOs and their players' associations, athletes have trust and confidence to raise match-fixing issues with those organisations.
- 5.19 However, at the end of the day, it is still for each organisation in the Sector to decide the extent to which it wishes or needs to have policies and procedures to deal with the various components of competition manipulation. And there is no overarching agency singularly focused on education about the risks of competition manipulation or compliance with rules. Furthermore, the components of competition manipulation are far broader than the actions criminalised by the Crimes Act. For example, the Act does not address behaviour undermining integrity such as the passing of inside information (say, to a bookmaker that a player is injured or particular pitch conditions) nor is the provision of such information prohibited by any overarching body or code.
- 5.20 The Council of Europe Convention on the Manipulation of Sports Competitions, better known as the Macolin Convention, is also relevant to this issue. The Convention is a multilateral treaty that aims to prevent, detect, and punish match-fixing in sport. It aims to do this by facilitating national and international coordination against the threat of the manipulation of sport and to establish a set of standards and measures to be implemented by public authorities, sports organisations and betting operators in order to prevent and combat manipulation of sport.
- 5.21 A significant number of countries have signed the Convention, with Australia becoming the 32nd signatory in 2019. New Zealand has not yet signed the Convention. As noted in the SIR, signing the Convention would entail a cost to New Zealand and, in all likelihood, the requirement for legislative review and change. However, the SIR noted that were match-fixing education programmes and a central reporting point established for the Sector, they would go a long way to meeting Convention obligations such that the cost of meeting remaining obligations upon New Zealand ratification would be minimal.
- 5.22 In terms of how the Sector deals with wider **corruption** related issues, the situation is similar to match-fixing. The Ministry of Justice administers most of the legislation which directly targets corruption-style offences whereas enforcement is the responsibility of the New Zealand Police and Serious Fraud Office; Sport NZ provides sports organisations with various templates and resources (such as finance policy templates) to assist in building capability and best practice to mitigate the risk of corruption.
- 5.23 However, there is no sport/recreation code or set of rules specifically addressing the risk of corruption or which outlines the minimum standards or practices required, and while Sport NZ delivers resources and education to the sector across a wide spectrum of corruption-related issues, there is no regulator or enforcement agency for the Sector with a particular focus on the risk of corruption in sport and active recreation.

- 5.24 As for “**member protection**”, in the SIR this was defined as “protecting those who engage and support from bullying, harassment, abuse, undue health and safety risks and other harm.” The current institutional arrangements to deal with member protection include:
- a) if the matter is criminal in nature, there is a range of applicable legislation enforced by a range of enforcement bodies, including the New Zealand Police and WorkSafe New Zealand.
  - b) There are various other Government agencies that deal with aspects of member protection, in particular the Human Rights Commission, Disability Commissioner and Race Relations Office.
  - c) In terms of rules, policies and guidelines, Sport NZ has, in its Integrity Guidance Portal, a comprehensive section on member protection including template policies for discrimination, harassment and bullying; Internet, email and social media; intimate relationships; conflicts of interest as well as a draft complaints policy, code of conduct and disciplinary procedure. There is a wealth of material available.
  - d) However, it is for individual organisations within the Sector to decide whether they adopt these policies and codes. And ultimately, those organisations are responsible for enforcing their own policies and codes. In essence, for matters below the criminal threshold, sports are largely self-regulating when it comes to member protection matters. Under the current system, effective protection is dependent not only on organisations having member protection policies and procedures but the capacity and capability to implement them.
  - e) Having said this, following the SIR and multiple previous reviews, in February 2021, Sport NZ launched a complaints and mediation service which is available to anyone involved in sport and recreation across Aotearoa/ New Zealand. The role of the SRCMS, as detailed on the Sport NZ Integrity Guidance Portal, is to provide a safe and independent way for anyone engaged in sport and active recreation to lodge a complaint, an issue or dispute and have it resolved in a timely manner. The service is available to anyone involved in community sport and recreation as well as elite sport and is free to the participants, with funding for the service coming from Sport NZ. The service is currently operated by Immediation New Zealand, a company with a strong track record in the provision of various dispute resolution services.
  - f) The SRCMS provided the IWG with details on its case load in its first year of operation. It received approximately 130 enquiries and complaints of which:
    - 100 complaints were triaged and deemed in scope.
    - Of the 70 matters that have closed<sup>30</sup>, 30 matters proceeded to early facilitation and/or mediation through the SRCMS of which resolution was achieved in over 85% of cases.
    - Of the 70 matters that have closed, 100% of the matters that reached a concluded mediation resolved some or all issues, with the vast majority resolving all of the issues between the parties; and
    - Of the 70 matters that have closed, a further 10 disputes were resolved directly between the parties having received background assistance from the service.

The range of work has included complaints by whistle-blowers, allegations of misconduct, allegations of sexual harassment, racial and disability discrimination, allegations of assault, issues of trauma and abuse including historic allegations involving children, athlete wellbeing and health and safety issues, matters involving individuals with mental health challenges including complaints from individuals at risk of self-harm.

25% of the issues are in high performance and many of the community issues are highly complex and sensitive. Roughly 1 in 4 matters involve vulnerable individuals, 40% are high profile with potential media involvement and half of the matters concern the adequacy of the organisational complaints process.
  - g) The SRCMS also has recently added an investigations arm to its range of services, which it appears has been much needed particularly for matters unsuitable for a mediation process. An SRCMS investigation requires the consent of the sporting organisation before it can be undertaken as well as Sport NZ’s prior approval.
  - h) And ultimately, the decision of any party to make or to attempt to resolve a complaint or dispute through the SRCMS is entirely voluntary.
- 5.25 Finally, but crucially, it is necessary to look at how our current institutional arrangements deal with **children’s sport and recreation**. At the policy level, the Ministry of Justice and Oranga Tamariki administer legislation relevant to children’s sport and recreation including the Children’s Act 2014. The Office of the Children’s Commissioner provides advice on child rights and wellbeing. The New Zealand Police is responsible for criminal behaviour involving children’s sport and recreation.

<sup>30</sup> The SRCMS advised that a matter is deemed closed usually because there has been a successful resolution at the mediation or facilitation stage; the complainant and/or respondent does not wish to proceed with a dispute resolution for whatever reason; or the complainant/respondent has been referred to another service.

- 5.26 In terms of rules, policies and guidelines, Sport NZ once again has, through its Integrity Guidance Portal, a comprehensive section on Safeguarding Children including template policies, and guidance on both legislative requirements for police vetting as well as an outline of suggested best practice. Sport NZ also offers online training modules in this area. The offerings for the Sector in this area are significant.
- 5.27 However, as with all the other areas noted above excluding anti-doping, it is for individual organisations within the Sector to decide whether they adopt these policies and codes. And ultimately, those organisations are responsible for enforcing their own rules.
- 5.28 And while some children's sport-related issues may be able to be dealt with by the SRCMS, again participation is voluntary<sup>31</sup>.
- 5.29 There is no monitoring agency or regulator specifically overseeing the integrity elements of children's sport and recreation.

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<sup>31</sup> Under its current rules, any matter relating to a child can be raised to the SRCMS unless it is a school matter. However, if a child is competing for a school in an NSO organised event this would fall within the scope of the SRCMS. Any event run by School Sport NZ would also fall within the scope of the SRCMS.

## 6. International Trends

- 6.1 As a country, we are by no means unique in questioning how we safeguard the integrity of sport. Over the last decade or so, there has been a seemingly endless stream of high-profile cases from around the world revealing quite shocking practices within sport in areas such as doping, sexual abuse and financial impropriety.
- 6.2 These have included, by way of just some high-profile examples:
- the World Anti-Doping Agency (WADA) finding that one of the world's most prominent and successful sporting nations, Russia, operated a state-sponsored doping programme for four years across the "vast majority" of summer and winter Olympic sports
  - the horrendous sexual abuse of multiple young female gymnasts by Doctor Larry Nassar and the subsequent cover up actions of USA Gymnastics, revealed in the Netflix Documentary *Athlete A*, and
  - the conviction and imprisonment by the French state of the long serving President of the IAAF (now World Athletics), the late Lamine Diack, for involvement in the cover-up of Russian doping in athletics.<sup>32</sup>
- 6.3 At the same time, sports across the Western world, in particular, have been rocked by multiple scandals involving allegations of bullying, sexual harassment and abuse, often tabled by athletes against coaches or those in positions of power; there has been a growing demand for athletes to have a greater role in decision-making; and athletes have taken strong public stands on issues of social justice such as the worldwide Black Lives Matter movement.
- 6.4 Several countries (and a number of international organisations) have responded by analysing their institutional arrangements for ensuring integrity in sport. The IWG has looked closely at these developments, paying particular attention to three countries that we have traditionally had close ties with, both in sport and more broadly.
- Australia**
- 6.5 As noted earlier, in 2018 the Report of the Review of Australia's Sports Integrity Arrangements (the Wood Review)<sup>33</sup> was released. Amongst its key findings, it concluded that the "evolving sophistication of the threats to sports integrity requires ongoing vigilance to ensure Australian sport is adequately protected" and that "at the heart of the framework, an effective and coordinated national capability" was needed. Based on the recommendations in the Wood Review, on 1 July 2020 Sport Integrity Australia (**SIA**) was established under the Sport Integrity Act 2020.
- 6.6 SIA was created by combining the Australian Sports Anti-Doping Authority (ASADA), the National Integrity of Sport Unit and the nationally focused integrity functions of Sport Australia. Its role is to provide advice and assistance to counter the:
- use of prohibited substances and methods in sport
  - abuse of children and other persons in a sporting environment
  - manipulation of sporting competitions
  - failure to protect members of sporting organisations and other persons in a sporting environment from bullying, intimidation, discrimination or harassment.
- 6.7 The IWG met with its CEO, David Sharpe and Deputy CEO (Strategy and International Engagement), Darren Mullaly. Some of the key points they emphasised were that-
- creating a one-stop shop for integrity has been highly valued by the sport sector in Australia
  - Australian sports organisations struggle with effective complaints handling
  - a lack of independence in complaints resolution has been an ongoing issue
  - the National Sports Tribunal has been hugely beneficial to many sports
  - SIA has focused more on capability building within the sector than regulating
  - one single reporting point to government on issues of sport integrity has been a success, and
  - being both an educator and enforcer has been very beneficial.
- 6.8 In terms of specific initiatives, SIA has introduced a National Integrity Framework<sup>34</sup> which provides sports bodies with a suite of template policies to address the integrity risks under its remit including:
- competition manipulation and sport wagering
  - member protection
  - child safeguarding
  - improper use of drugs and medicine
  - complaints, disputes and discipline

<sup>32</sup> <https://www.theguardian.com/sport/2020/sep/16/lamine-diack-former-world-athletics-president-found-guilty-of-corruption-and-sentenced-to-two-years-in-prison>

<sup>33</sup> Report of the Review of Australia's Sport Integrity Arrangements (the Wood Review)

<sup>34</sup> Sport Integrity Australia – National Integrity Framework

- 6.9 SIA has driven legislative change to enhance its approach to anti-doping to align with WADA's updated (2021) World Anti-Doping Code. These changes include:
- streamlining the results management process
  - flexibility to handle cases of lower-level athletes
  - strengthened investigative powers and disclosure notice regime
  - ability to respond to public comments and address misinformation
  - new Anti-Doping Rule Violation to discourage retaliation against whistle-blowers
  - expanding the WADA Code's application to board members and other officials
  - reduced sanctions for abuse of substances
- 6.10 In late 2021, it launched the Safeguarding in Sport Continuous Improvement Programme which aims to foster a culture of child safety and member protection across every area of sport in Australia. To achieve this, the programme aims to:
- provide a mechanism through which sports can demonstrate their commitment to child safeguarding and member protection to the public
  - address each sport's needs through sport-specific action plans
  - assist sporting organisations to meet emerging and existing legislative and regulatory requirements, such as state-based Child Safe Standards
  - promote a nationally consistent approach that accords with the National Principles for Child Safe Organisations
  - identify high-risk areas and implementing strategies to both minimise and manage these with support and guidance
  - hold sports to account on their progress with child safeguarding and member protection practices
  - provide the leaders and governing bodies of sport with an independent perspective, offering oversight of their safeguarding plans.
- 6.11 The SIA has also introduced an Independent Complaints Handling Model. National sporting organisations (NSOs) that adopt the National Integrity Framework have access to this service. From July 2020 to 26 October 2021 there were a total of 694 individual matters reported relating to:
- Competition Manipulation (62)
  - Member Protection / Child Safeguarding (252)
  - Doping (263)
  - Sport Governance (112)
  - Commercial matters (5)
- 6.12 The Australian Sports Wagering Scheme has been established to streamline current sports wagering regulation to provide clarity, transparency and consistency across Commonwealth, state and territory jurisdictions. Key elements of the Scheme involve an approach to national consistency in:
- sports controlling bodies and the related product fee and integrity agreements
  - wagering contingencies
  - wagering data and suspicious activity alert handling.
- 6.13 The SIA also coordinates, develops, and delivers education relating to integrity themes. In 2020-2021, 75,000 members of the Australian sporting community received online education, face-to-face sessions, outreach events and/or interactive education tools, such as virtual reality simulations, on integrity matters.
- 6.14 And the National Sports Tribunal was established under the National Sports Tribunal Act 2019 and began operating on 19 March 2020 on an opt-in, two-year trial basis. Given the impact of COVID-19, the trial period of the NST has been extended for a further year to March 2023.
- 6.15 There are however, learnings for us arising from Australia's process of creating a new sports integrity framework. In particular, as of 25 February 2022, only 18 of the recognised sports in Australia had adopted the National Integrity Framework.<sup>35</sup> This is relevant because the SIA cannot process complaints (outside of doping) relating to a sport that has not implemented the National Integrity Framework.
- 6.16 Similarly, the National Sports Tribunal is currently a consent-based service.<sup>36</sup>

<sup>35</sup> <https://www.sportintegrity.gov.au/what-we-do/national-integrity-framework/sports-signed-national-integrity-framework>

<sup>36</sup> <https://www.nationalsporttribunal.gov.au/dispute-resolution-services/accessing-nst>

## Canada

- 6.17 In Canada, the Canadian Centre for Ethics in Sport (CCES) is a national, not-for-profit organisation created out of the merger of the Canadian Centre for Drug Free Sport and Fair Play Canada. The CCES receives funding from Sport Canada, fees for services and grants.
- 6.18 Its objective is to work collaboratively to help activate “a values-based and principle-driven sport system; protecting the integrity of sport from the negative forces of doping and other unethical threats; and advocating for sport that is fair, safe and open to everyone.”
- 6.19 It is responsible for implementing the Canadian Anti-Doping Program (CADP) and has recently released True Sport<sup>37</sup> - a series of programmes and initiatives designed to “give people, communities and organizations a platform of shared values and principles.”
- 6.20 The mission of True Sport is to deliver programmes and initiatives that:
- Enable participants, parents, coaches and officials to articulate and act upon their deeply held belief in the virtues of good sport
  - Enable participants, parents, coaches and officials to identify with others holding similar values
  - Create a fair, safe and open atmosphere where good sport can grow stronger through inclusive competition at all levels.
- 6.21 The Sport Dispute Resolution Centre of Canada (SDRCC) is a separate entity established in 2003 as an independent organisation funded by Sport Canada, with the aim of providing the Canadian sport community with the tools to prevent conflicts, and when they are inevitable, to resolve them. The SDRCC operates three Tribunals, an Ordinary Tribunal, a Doping Tribunal and a Doping Appeal Tribunal.
- 6.22 It also offers a range of dispute resolution services as well as a Dispute Prevention Resource Centre. And it provides, in partnership with the Canadian Centre for Mental Health in Sport, a national free helpline offering assistance to victims or witnesses of harassment, abuse or discrimination in sport.

- 6.23 Most recently, the Canadian government announced in July 2021 it would provide CAN\$2.1 million worth of funding to the SDRCC to create the Office of the Sport Integrity Commissioner. The role of the Commissioner will be:

*“... to deal with complaints of abuse in sport at the national level through a centralised and independent reporting process. The office of the Sport Integrity Commissioner will oversee the complaint intake process, conduct preliminary assessments, initiate full investigations and refer cases to independent mediation or arbitration professionals for participating organisations. It will also be responsible for maintaining a record of sanctions and for monitoring and reporting on the implementation of safe sport policies, procedures and sanctions.”*

- 6.24 Sport Canada, for its part, has helped develop the Universal Code of Conduct to Prevent and Address Maltreatment in Sport (UCCMS) and has introduced the Independent Safe Sport Mechanism which provides funding to Canadian sports organisations to establish and deliver an independent mechanism to implement the UCCMS.
- 6.25 The SDRCC recently released a report based on consultation with national sports organisations to elicit feedback on the design and implementation of the UCCMS<sup>38</sup>. Many of the comments in the report mirrored feedback provided to the IWG about sport integrity in New Zealand, namely that challenges to the Canadian system were: the complexity of the model; a general lack of understanding on the part of sport participants about how complainant processes work, combined with concerns about systematic bias, conflicts of interest and a perceived lack of independence; the lack of capacity of sports organisations to deal with these issues and the critical need for quality education in this area.

## United Kingdom

- 6.26 In something of a contrast to the approach adopted in Australia and Canada, the United Kingdom has focussed most of its centrally funded programmes on assisting national sports organisations to better manage integrity related programmes themselves.
- 6.27 Organisations such as UK Sport, Sport England, Sport Scotland, and Sport Wales provide resources for organisations in areas such as safeguarding and good governance with United Kingdom Anti-Doping (UKAD) operating as the national anti-doping agency. However, there is no overarching agency responsible for integrity in the sector.

<sup>37</sup> www.truesportpur.ca

<sup>38</sup> SDRCC - National Consultations on the Independent Safe Sport Mechanism-Summary Report, December 22, 2021

- 6.28 Sport Resolutions UK is an independent, not-for-profit, dispute resolution service for sport, which aims to provide a cost-effective alternative to internal appeals and litigation. It provides sport-specific arbitration and mediation services, investigation and independent review services and operates the national anti-doping panel and national safeguarding panel. In 2020-2021, Sport Resolutions UK received 279 requests for dispute resolution guidance and help.
- 6.29 There have been periodic calls for the establishment of a sports ombudsman in the United Kingdom, most recently by Baroness Tanni Grey-Thomson in her 2017 *Duty of Care in Sport* independent review for the UK Government.<sup>39</sup> However, to date a sports ombudsman has not been established in the UK.

### Other Countries

- 6.30 In addition to the countries considered above, the IWG has reviewed a good deal of material written in recent times about other international developments. For example, Germany announced late last year that it is setting up a Safe Sport entity (independent of Athleten Deutschland) as an independent voice of athletes; similarly last year SafeSport Sweden was launched as an independent Swedish safe-sports organization that aims to safeguard Swedish athletes' right to safe sport environments, through the provision of research and education/information to decision-makers and supporting athletes with support, help and advice with notifications and appeals; and Singapore has recently created the Safe Sport Commission Singapore which has launched a Safe Sport Unified Code.
- 6.31 There are inevitable dangers when looking too closely at how other countries are addressing integrity issues in sport; legal systems are different, funding sources vary, and historical and cultural differences are also relevant.
- 6.32 But perhaps the clearest trend internationally is that many countries are re-assessing their systems and structures to deal with integrity in sport and, where those systems and structures are found to be not fit for purpose, are making changes.

<sup>39</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/610130/Duty\\_of\\_Care\\_Review\\_-\\_April\\_2017\\_\\_2.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/610130/Duty_of_Care_Review_-_April_2017__2.pdf)

## 7. Sector Feedback

- 7.1 Throughout the course of 2021, the IWG consulted widely with the Sector. The IWG met with a wide variety of stakeholders. This included entities dealing directly with integrity issues across the Sector, agencies dealing with wider integrity issues such as the Human Rights Commission and Office of the Children's Commissioner, and also subject matter experts in areas such as sports corruption and human rights. Specific feedback was also sought on how any future design would need to uphold the mana of Te Tiriti o Waitangi / Treaty of Waitangi and its principles of Partnership, Protection and Participation.
- 7.2 In addition, Sport NZ invited any organisations or individuals with an interest in our work to make contact with the IWG.
- 7.3 The IWG wishes to express its gratitude to everyone who provided feedback - the information we received was invariably constructive, thoughtful, and with the best interests of Aotearoa/New Zealand at heart.
- 7.4 While it is difficult to summarise that feedback in a report of this nature, a number of clear themes emerged as follows:
- Despite best intentions, the vast majority of sport and recreation organisations do not have the capacity and capability to prevent Integrity issues nor resolve them efficiently through complaints processes.
  - There is a strong sense that our current system is not fit for purpose: there is a lack of trust in the ability of Sector organisations to deal with integrity issues objectively and to support those who have experienced trauma. For example, when sport and recreation organisations are confronted with integrity issues, conflicts of interest often abound - the athlete/participant and/or the alleged wrongdoer are often well known to the people considering the issue and it is very difficult to achieve objectivity. And few organisations have the skill set to understand the often complex perspectives, reactions and needs of a victim of inappropriate behaviour.
  - Against this, some sports like New Zealand Rugby and New Zealand Cricket feel they are dealing with integrity issues very well, particularly where there is athlete representation and buy-in from all parties.
  - For many, there was a perceived lack of trust in Sport NZ's ability to act objectively and independently in addressing integrity issues given its close working relationships with national sports organisations, and its role as the main funder of the Sector. Athlete/participant groups spoke of athlete reluctance to raise issues with Sport NZ fearing that doing so could ultimately hurt their sport's main funding stream.
  - Despite this, in recent times, Sport NZ has produced some excellent resources and training modules on issues of integrity that are getting some buy-in from the Sector. However, use/adoption of these resources remains voluntary.
  - We have a significant gap in terms of how we are dealing with competition manipulation with a lack of rules, education or focus within the Sector and with no "ownership" of this space by any agency. Several groups or individuals who presented to the IWG emphasised the seriousness of the problem of competition manipulation both in a domestic context and international context and felt that as a country, we were extremely vulnerable to betting related corruption in sport.
  - That given the audience is essentially the same, it could be a logical step to expand DFSNZ's remit to include competition manipulation. Those with expertise in this area also strongly supported New Zealand becoming a signatory to the Macolin Convention.
  - There are fundamental/minimum standards of conduct and behaviour which could be encapsulated in a national code with which the whole Sector has to comply.
  - If a code of this nature is created, it should be founded on the fundamental human rights which Aotearoa/New Zealand has recognised.
  - Consideration should also be given to ensuring compliance with a code of this nature is conditional on Sport NZ partner funding - with the suggestion that this in itself is consistent with our human rights obligations.
  - The SRCMS, whilst still relatively new to the Sector, is led by some very talented and experienced people and is likely to add considerable value to the Sector.
  - Some concern was expressed that it could be too soon to make changes to the SRCMS and that it needed time to make a material difference. There was also a view expressed by some that the SRCMS could be strengthened by compelling all parties to a complaint to fully participate in the SRCMS process, perhaps through compliance with a national code.
  - In relation to child safeguarding, we received some feedback suggesting an independent Children's Commissioner for Sport should sit within the Office of the Children's Commissioner in the same way the Human Rights Commissioner (holding the Sport portfolio) sits with the Human Rights Commission.
  - There was also strong support for the view that in developing any new or revised system or institution, the focus needed to shift from one where the capability of a national organisation was the main focus to one where the participant/athlete had to be the focal point- and that the detailed design should be informed by the views of those who have actually experienced the trauma of unacceptable behaviour in a sporting or active recreational environment.
  - Finally, but crucially, a strong message noted by the IWG was that any new or revised system must be one where tangata whenua see themselves in the process and where solutions are not imposed from afar but are designed by Māori.

- 7.5 One other question posed by some of the people we spoke to was whether there was genuine awareness of the “size of the problem” and in particular whether creating new structures or entities could be, as one person described it, “crushing a nut with a sledgehammer.”
- 7.6 In a project of this nature, it is entirely appropriate to first understand the size of the problem. However, to a very large extent, that exercise was already completed by Sport NZ itself when it conducted its SIR in 2019. The Review was based on extensive consultation with the Sector – and in the report that followed, it specifically noted in its key findings that:
- “the key overall finding from the analysis is that there is a lack of capability across the sport sector to deal with integrity related issues, particularly in relation to the reporting and management of sports complaints.
  - sports organisations, particularly smaller organisations, are struggling to keep up with what is an increasingly complex and multidimensional area.
- 7.7 The SIR made 22 recommendations. One of the roles of the IWG has been to assess, through consultation with the Sector, whether the implementation of many of those recommendations has been enough to materially change the findings noted in the SIR. We have examined whether we now have a Sector with the capability to deal with integrity issues particularly in relation to reporting and management of sports complaints.
- 7.8 As can be seen from the feedback referred to above (supported also by further feedback referred to later in this report) the IWG has little doubt that, despite the best efforts of a number of staff at Sport NZ, we do not. There is still a lack of capability across the sport sector to deal with integrity issues, particularly in relation to the reporting and management of sports complaints and sports organisations, particularly smaller organisations, are still struggling to keep up with what is an increasingly complex and multidimensional area.
- 7.9 Further evidence of this is seen in the workload of the SRCMS. We were told that many people in the Sector are unaware of this service yet as noted earlier, in just its first year of existence, it still had to deal with 130 enquiries, 100 of which were in scope and many of the matters it has had to deal with have been of a challenging and sensitive nature.
- 7.10 Those numbers (together with the research outlined in the SIR), the multiple reviews that have had to have been conducted into alleged inappropriate behaviour and breaches of wellbeing and human rights, and the feedback provided directly to the IWG through its consultation process, all confirm that integrity in sport and active recreation at a personal, organisation and competition level continues to be a huge problem in Aotearoa New Zealand. This remains an area we, as a country, have yet to adequately address.
- 7.11 Another related concern raised in some of the feedback, was that any new or revised system could get overrun if it dealt with all integrity issues across the Sector. However, while a valid concern, the solution to that issue lies both in the design of the system and how it is resourced.

## 8. Design Objectives And Principles

- 8.1 The Terms of Reference for the IWG provide that, as part of the assessment process, the IWG was to assess any new or revised model against five specific criteria, plus any further criteria the IWG considered necessary. The five criteria were:
- **Independence** - does the proposed solution include the requisite level of independence?
  - **Trust worthiness** - will participants trust the proposed solution to protect against and resolve integrity issues when they arise?
  - **Effectiveness** - will the proposed solution protect against and resolve integrity issues when they arise in a suitably effective and efficient manner?
  - **Cost efficiency (operational)** - will the proposed solution protect against and resolve integrity issues when they arise in a cost-efficient manner?
  - **Cost efficiency (establishment)** - will the cost of establishing the proposed solution balance against the scale of the issues it is seeking to mitigate?
- 8.2 As this project developed, the IWG felt it would benefit from a structured approach to this assessment process and worked with MartinJenkins to further develop design objectives, principles and functions. Essentially, the IWG wanted to capture exactly what was required for a successful, fit-for-purpose system so that it could use that information to assess the status quo and, if necessary, develop a new or revised fit-for-purpose design.
- 8.3 Informed by the criteria set out in the terms of reference, the feedback received through the consultation process and the experiences of the various members of the IWG, we reached the view that a successful, fit-for-purpose system would meet the following design objectives:
- Design objectives**
- f) Supports an **athlete and participant centred** approach, including athlete and participant voice, and facilitates trust by accommodating the varying needs of participants in the system.
- g) Provides a **simple, accessible system designed for Aotearoa New Zealand** that covers all dimensions of integrity across the play, active recreation and sport system.
- h) Enables a **more consistent interpretation and application of integrity standards** across the system, meeting national and international obligations
- i) Achieves **actual and perceived independence and independent decision-making** which fosters the support, confidence and trust of participants in the system.
- j) Provides a **cost-effective solution** by protecting against and resolving integrity issues effectively and efficiently, and with an establishment cost proportionate to the scale of the issues it is seeking to resolve.
- 8.4 The rationale for these design objectives can be found in the previous sections of this report - they are consistent with the feedback we received, the research conducted and international trends.
- 8.5 However, three of the objectives warrant particular emphasis. A strong theme emerged, particularly in the feedback we received, that to be successful, an integrity system for sport and recreation needed to put the athlete/ participant at its centre, to view issues from the athlete/ participant perspective, to understand the athletes'/ participants' needs and to design options and solutions that they trusted and would have the confidence to use.
- 8.6 That objective aligned closely with another very strong theme - the need for there to be actual and perceived independence in the processes which deal with integrity issues in the Sector and in the decision-making when issues arise.
- 8.7 First and foremost, a strong integrity system needs to provide independence from the self-interest and self-preservation that, we were repeatedly told, the Sector has struggled to provide, when confronted with integrity issues. As noted earlier, there are genuine risks when sport polices sport.
- 8.8 The other aspect of independence was the strong view expressed by many, that Sport NZ and HPSNZ should not take the lead role in the integrity space. The concerns ranged from:
- Athletes and sports organisations being reluctant to raise issues with Sport NZ and HPSNZ because of their role as funder of the sport sector and the potential impact on that funding.
  - Athletes/participants being wary of the close working relationships Sport NZ and HPSNZ have with national sporting organisations
  - There is a lack of trust that Sport NZ and HPSNZ can genuinely adopt an athlete /participant focus
  - A view that Sport NZ should not be overseeing a complaints, investigation and disciplinary process while also being the ultimate funder of sport - and that this dual role compromises its own independence, particularly when it comes to funding decisions.
  - A view that Sport NZ and HPSNZ have had the responsibility for providing leadership in integrity issues within the Sector over the last decade, but its focus has often been compromised by other priorities such as driving participation, improving capability and, in more recent times, dealing with the COVID-19 pandemic.
  - That no organisation should both promote and police sport - the two objectives can too easily come into conflict.

8.9 The other strong theme to emerge in the feedback we received, which is reflected in the design objectives, is the need for any system to be easy to access, simple to understand and with clear lines of responsibility.

8.10 These design objectives were supported by a series of design principles - principles which do not necessarily drive change, but which are important to take into account when considering various options. Inevitably in a design process, some of these principles need to be balanced against one another and trade-offs are sometimes required. The design principles the IWG have used in this project are as follows:

### Design Principles

a) Effective and efficient performance

- Provides **levers to facilitate compliance** with integrity standards
- Provides **clear accountabilities, roles, processes and pathways** which minimise duplication, informed by athlete and participant voice
- Supports and enables **capability building, information sharing and collaboration** across the system
- Provides for **system stewardship** to lead, monitor and evaluate the effectiveness of the system

b) Culture and values fit

- Enables a culture founded on **fundamental human rights, including athlete rights and welfare and the rights of the child**
- Provides for a **Te Ao Māori approach, upholding the principles of Te Tiriti o Waitangi, and is inclusive of the diversity of contemporary Aotearoa/New Zealand**

c) Stakeholder focus

- Builds and supports the **capability of all parties** to understand and comply with required integrity standards, and **assists with capacity challenges**
- Facilitates, supports and empowers **athlete and participant engagement** in the system
- Provides appropriate recognition of the **self-governance of private organisations**, whilst **maintaining standards** and **managing conflicts of interest**

d) Implementable and adaptable including:

- **Manageable scale of change** to be fully established within five years
- Potential to be **resourced and funded**
- **Future-proofed** to adapt over a longer time horizon without requiring organisational re-design

8.11 The IWG then considered the current system against these design objectives and design principles.

## 9. Is Our Current Integrity System Fit For Purpose?

- 9.1 The current system Aotearoa/New Zealand has in place for dealing with integrity issues across the Sector is summarised in section 5 of this report. The IWG reviewed that system against the design objectives and design principles and unanimously concluded that, despite the best efforts of a range of highly committed people, our current system is lacking in a number of key areas - and **the system does not meet the majority of design objectives and design principles required of a strong integrity system.**
- 9.2 Before setting out our reasoning for this view, it is important to emphasise that nothing in this report should be seen as challenging the fundamental responsibility Sector organisations owe to keep their participants safe. That obligation should always be at the centre of the thinking of all leaders of the Sector at all levels of the Sector. The issue is whether we have an integrity system which helps facilitate the meeting of that obligation by ensuring all participants involved in sport and active recreation, can participate in safety, security, and with their wellbeing protected.
- 9.3 The first design objective is that we have a system that supports an **athlete and participant centred approach**, including athlete and participant voice, and facilitates trust by accommodating the varying needs of participants in the system. The feedback we received from various athletes and representative groups is that the current system is not viewed as athlete and participant centred and trust is lacking.
- 9.4 Whilst Sport NZ is doing work on a project it hopes will ensure greater athlete and participant voice in key decision-making across the Sector, much of that work is in its infancy. And if one looks at the current systems and structures in place to deal with integrity issues, there is little to suggest athletes and participants are at the centre of the system<sup>40</sup>, and that the various modules, policies and dispute resolution systems are athlete/survivor informed.
- 9.5 The IWG accepts that Sport NZ and organisations such as the SRCMS are endeavouring to provide services with the athlete/participant in mind, but for a system such as this to be truly athlete/participant centred, athletes and participants need to be involved in the design of the education and training, and in the design of resolution options - to ensure their view is recognised. And they also need to be involved in the overall provision of integrity services.
- 9.6 The IWG was also unable to view our current system as **simple, accessible and covering all dimensions of integrity.** As the analysis in section 5 shows, there are multiple players involved in the current system - and there is no single body entirely focused on these issues.
- 9.7 When integrity issues arise, they can quickly become extremely complex. For example, an integrity issue may begin with an allegation to a club committee of sexual harassment by a promising teenage female swimmer against an older male coach at her swim club. Depending on how well that is addressed, the athlete (or her parents) or even the club may escalate the issue to a regional body or even a national body. The matter may involve an internal (or external) investigation and possibly various hearings before an internal disciplinary panel. Whether those involved have the skills and experience to deal with this issue is entirely dependent on the sport itself.
- 9.8 Throughout this period, whether the athlete herself is getting appropriate counselling/trauma support is dependent on the people around her and the sport itself.
- 9.9 This type of issue could also involve multiple government agencies (including law enforcement depending on the athlete's age and the level of alleged harassment), and it could even be reported in the media.
- 9.10 Certainly one very positive development in recent times is that the parties to this type of dispute could now decide to call on the SRCMS for assistance in trying to resolve their issue. But even if they were aware of this service, as currently established, participation before the SRCMS is voluntary; the services it offers are limited to the scope of its contract (for example, it does not offer disciplinary panels/formal hearings); it has no decision-making role; nor can it enforce any outcome. And, under its current arrangements, any investigation recommended by the SRCMS would need to be approved by Sport NZ.
- 9.11 Fundamentally, the IWG believes that the current integrity system for the sector is neither clear nor simple.
- 9.12 As for whether our current system covers all dimensions of integrity, as previously noted, there is also a significant gap in terms of competition manipulation with no one agency seemingly taking a clear leadership role in this space. In the IWG's opinion, there is also a serious lack of support for victims of sport integrity breaches.
- 9.13 The next design objective seeks a system that allows for a **more consistent interpretation and application of integrity standards.** In the IWG's opinion, our current system lacks clear integrity standards. While Sport NZ has provided some very good resources on its integrity portal including draft policies on key integrity areas, there is no requirement on the Sector to adopt these policies and take-up is mixed.
- 9.14 In addition, we do not have any overarching code or minimum set of standards that must be met by the Sector. And, because of the multiple parties typically involved in an integrity issue, and the wide variety of practices adopted across the Sector, there is no consistency in approach or outcome.

<sup>40</sup> The exception being the handful of sports that have designed integrity systems in partnership with their athletes and/or players associations.

- 9.15 As for whether the current system achieves **actual and perceived independence and independent decision-making**, as noted earlier, there is a very strong view in the Sector that independence is lacking, both when sports and recreation organisations are facing integrity issues involving their own members, and also when Sport NZ and HPSNZ become involved. Unquestionably, there is a lack of perceived independence, which undermines the support, confidence and trust of participants.
- 9.16 The IWG also is of the view that, in many cases, this perceived lack of independence is real, for the reasons set out earlier in this report.
- 9.17 It is acknowledged that the SRCMS is performed by a third-party provider, Immediation New Zealand Ltd, which provides its services independently of Sport NZ. This development does, in the IWG's view, provide a degree of independence from Sport NZ, although the fact the service is contracted to Sport NZ and its performance is monitored by Sport NZ does somewhat temper that level of independence.
- 9.18 The SCRMS is also not a permanent, statutory based entity but is a service provided under contract to Sport NZ – with no surety beyond the term of the contract. That again somewhat undermines the perception of full independence, particularly given that SRCMS may, on occasion, field complaints about the actions of Sport NZ and/or HPSNZ.
- 9.19 As for whether the current system provides a **cost-effective solution** by protecting against and resolving integrity issues effectively and efficiently, again initial indications are that the SRCMS may well be delivering such a solution.
- 9.20 The resources and education modules provided by Sport NZ are also free of charge for the Sector and provide some excellent resources. However, beyond the SRCMS and the resources produced by Sport NZ, there is little to suggest our current system provides a cost-effective solution. The multiple players and level of complexity in our current system when dealing with integrity matters inevitably leads to significant costs being incurred across the Sector - not to mention the significant human cost when such issues are poorly handled.
- 9.21 And in the worst cases, such matters can also lead to major investigations or reviews at substantial cost to the Sector.
- 9.22 **For all of the above reasons, the IWG firmly believes substantial changes are required to our current systems and institutions to deal with integrity issues across the Sector - the status quo is deficient.**

## 10. Two Different Options

- 10.1 Having concluded that there is a compelling need for change, the IWG developed two alternative systems for further analysis. Those two options were then reviewed against a series of factual scenarios (based at least in part on actual cases). Having done so, the IWG felt comfortable these were the best two options to take forward for further consideration.
- 10.2 It is important to emphasise at this point that, while both options contain a reasonable level of detail, the options are still, in large part, at the conceptual stage of design. As such, if one or other option is ultimately adopted, a significant amount of work will be required to develop the detail to operationalise the design. That must be the next phase of this project.
- 10.3 This is consistent with the terms of reference which asked the IWG to make recommendations regarding the appropriate institutional arrangements and structures needed – not to design in detail every individual component.
- 10.4 Before outlining the two options we developed, there are some common elements to both options which are extremely important which should be noted at the outset.
- National Code of Sport Integrity (NCSI)**
- 10.5 Both Option A and Option B are founded, in part, upon the premise that Aotearoa/New Zealand needs to introduce a national code of integrity for the Sector called, for the purposes of this review, the National Code of Sport Integrity (NCSI).
- 10.6 From a relatively early stage in the consultation process, the need for such a code became apparent. Time and again we were told of the need for greater clarity, for greater certainty and for a greater understanding of at least the minimum standards required to deal with integrity issues within the Sector. Under our current system, Sport NZ has produced many excellent resources addressing issues of integrity but adoption is voluntary and there is no one overarching document which outlines, in unequivocal terms, what is acceptable and what is not, and what must be done when potential integrity breach arises.
- 10.7 As noted earlier, several countries have introduced some form of national code to safeguard sport – but the vast majority of these appear to remain optional in nature - at least at local or federal level.
- 10.8 The IWG believes that New Zealand has a unique opportunity to create a NCSI that sets minimum standards **across the entire Sector**, and which applies to the vast majority, if not all, involved. This document would form the cornerstone of the Sector's integrity system – setting clear minimum standards founded on fundamental human rights.
- 10.9 The NCSI would focus on participant/athlete protection and the prevention of harm - with the fundamental aim of providing the participant/ athlete with a safe environment. While the exact details of the NCSI would require careful preparation, and extensive consultation, the IWG envisages it should, at a minimum:
- define integrity in a manner consistent with this report
  - emphasise the purpose, scope and importance of integrity in active recreation and sport
  - outline a series of minimum standards in key areas such as child safeguarding, member protection, and organisational culture
  - detail behaviours which breach integrity, founded on fundamental human rights, and which create offences when contravened
  - outline a user-friendly, survivor-informed process to raise complaints and alleged breaches
  - provide for the undertaking of independent investigations
  - set out a system that allows for access to multiple dispute resolution processes including facilitation, mediation, tikanga-ingrained processes<sup>41</sup>, restorative justice, other problem-solving options tailored by the parties involved and where necessary, a formal process before a disciplinary panel.
- 10.10 There is however, an important caveat to the introduction of a universal/national code. The IWG is very conscious that there are some sports and recreation organisations that have, over time, developed comprehensive approaches to various integrity issues. In some cases, these have been designed in conjunction with the relevant players' associations and indeed in some instances, education programs are even delivered by the players association. To be viable, any national code must recognise that where a sustainable system is already in place which provides the fundamental safeguards needed, a national solution should not be imposed; rather, a form of accreditation or similar will be needed in those cases.
- 10.11 This is particularly important for those sports with Player Associations – to the extent that representatives of the New Zealand Athletes' Federation are of the view the Code should be agreed with those sports to ensure buy-in and trust.

<sup>41</sup> The flexibility to construct a resolution process designed by (and therefore used by) Māori is of fundamental importance here

### Competition Manipulation and the Macolin Convention

- 10.12 As noted earlier, there is a strong view in the Sector that our system currently fails to adequately address the risk of competition manipulation - particularly at a time when more and more sport is being broadcast and/or streamed live, and thus more likely to attract illegal gambling. David Howman, a renowned expert in this area, was particularly compelling in this regard. He noted that illegal gambling in New Zealand is suspected to far exceed the amount placed legally with the New Zealand TAB - and that the live streaming of any event makes that event far more exposed to competition manipulation, particularly by those involved in the illegal gambling industry.
- 10.13 A major focus of the Macolin Convention is to prevent and to punish illegal sports betting operators and to prevent conflicts of interest in legal sports betting operators and sports organisations. As noted earlier, New Zealand is not a signatory to the Macolin Convention, a position the IWG would like to see change.
- 10.14 Under both Options A and B, it is envisaged New Zealand will become a signatory and, a responsible entity will develop core standards, guidance and advice for the Sector, alongside monitoring and investigative functions.

### OPTION A - An Evolutionary Approach

- 10.15 Option A is somewhat of an evolutionary model: it recognises that change is necessary, but builds on our existing system, particularly the changes that have emerged since the SIR and the implementation of many of its 22 recommendations.
- 10.16 The underlying rationale for Option A is that current system can be adapted to deliver the type of safe, fair and inclusive system that we need in Aotearoa/New Zealand given that:
- good progress has been made against the implementation of the various SIR recommendations (see Appendix 3)
  - the introduction of Sport NZ/HPSNZ's Athlete Voice project is imminent
  - a Sport NZ sector capability programme focussed on integrity at NSO/NRO/Regional Sports Trust level is being embarked on; and
  - the SRCMS is already proving to be a valuable tool and with time, has the capacity to make a material difference to the Sector.

10.17 Under Option A:

- Sport NZ would largely retain its Integrity functions as a kaitiaki of the system
- Integrity within Sport NZ would receive a separate appropriation to support a specialised integrity unit
- That unit would receive a degree of independent oversight through-
  - a specialist Integrity Advisory Committee; or
  - a statutory director of integrity within Sport NZ, who would have statutory independence in exercising the powers and functions of a sport integrity regulator.
- The integrity unit's focus would be to work with national organisations to uplift capability across all areas of integrity.
- The role of existing independent institutions would be expanded: DFSNZ would take on competition manipulation functions and the SRCMS could exercise a broader range of dispute resolution services including performance of investigations and disciplinary panels.
- The model would have multiple entry and escalation points for athletes, participants and organisations to deal with integrity related issues.
- And it uses Sport NZ's access to compliance levers, such as funding and recognition as the NSO or NRO to drive change, without requiring substantial legislative change.

10.18 Set out below is a table that provides further detail for Option A. The first part of the table describes the generic function that needs to be performed and the second part describes how Option A would provide that function.

### System Stewardship

*This function provides a kaitiaki role, as guardian of the system. It takes a whole-of-system view, monitoring, reporting and evaluating the effectiveness of efforts to inform strategy, and changes to the system design and operation.*

.....

Sport NZ would continue to provide its kaitiaki role as guardian of the system, and all related policy and ministerial servicing functions.

DFSNZ would provide the management, education and regulation of anti-doping and competition manipulation.

The Ministry of Culture and Heritage would maintain its monitoring role on behalf of the Minister of Sport and Recreation.

### Cross Government Relationships

*Partners and coordinates with other national and international bodies outside of the Play, Active Recreation and Sport sector that have a role in strengthening understanding of and compliance with integrity standards; achieves escalation to a government agency when needed.*

.....

Sport NZ and DFSNZ would continue to carry out this role as it relates to their specific functions.

Strong relationships would be needed with, inter alia:

- Human Rights, Disability and Children's Commissions
- MCH as the monitoring agency
- NZ Police, Customs, Serious Fraud Office and other enforcement agencies
- TAB and Racing Integrity Board

## Legislation

*In terms of potential changes to legislation:*

### **Sports Anti-Doping Act**

*From an operational perspective, this legislation is considered largely fit for purpose in its current form. However the Act will ultimately be required to change to reflect proposed amendments under Option A (& B).*

### **Match-Fixing Legislation**

*Assuming the New Zealand Government becomes a signatory to the Macolin Convention there will be a requirement to review the current legislation against the Convention and align where possible.*

### **Sport and Recreation New Zealand Act**

*This is the founding legislation for Sport NZ (formerly Sport and Recreation NZ) which establishes its functions including responsibility for integrity matters. If additional regulatory powers are sought under option A or B, then amendments may be required.*

*Under both Option A & B the Sport NZ Policy function will maintain responsibility for advising government on any legislative matters as they relate to integrity, including recommended amendments and their impact.*

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### **Sports Anti-Doping Act**

DFSNZ would continue to be responsible for operationalising this Act.

Ultimately the Act will require change (or be replaced) to reflect the expanded role of DFSNZ into match-fixing and competition manipulation. In the interim, this could potentially be managed through a contractual relationship between Sport NZ and DFSNZ (Sport NZ can contract to DFSNZ to the extent to which current legislation allows and/ or via a Ministerial directive.

If additional regulatory/investigatory powers are needed, then changes will also be required.

Sport NZ would be responsible for progressing legislative changes.

### **Match-Fixing Legislation**

Assuming the New Zealand Government becomes a signatory to the Macolin Convention, DFSNZ would:

- ensure complementary standards, advice, and guidance is produced and communicated;
- ensure its approach to monitoring and regulating is aligned to the standards within the Convention and legislation.

Sport NZ would be responsible for progressing legislative changes.

### **Sport and Recreation NZ Act**

If additional regulatory/investigatory powers are sought e.g. mandatory compliance with integrity code, legislative changes will be required. In the interim this may be able to be achieved via requirements within Relationship Agreements.

Sport NZ would be responsible for progressing legislative changes.

## Policy - Government

*Advice and Ministerial Servicing to the Minister of Sport and Recreation; Advising on the development of legislation; Administering the Sports Anti-Doping Act; World Anti-Doping Act Code*

.....

Sport NZ would retain its Policy function, separate to its internal integrity unit, but with a close working relationship to understand policy in practice and vice versa.

## Operational Policy - Sector

*Setting standards for participants in the system to meet national and international expectations and obligations.*

.....

Sport NZ (integrity unit) would continue to have this role, with the exceptions of doping and match-fixing. These would become the responsibility of DFSNZ (with an expanded match-fixing role).

## Funding

*The current appropriations under Vote Sport & Recreation are:*

- *Sport & Recreation Programmes (Sport NZ)*
- *High Performance Programmes (Sport NZ for HPSNZ)*
- *Prime Minister's Scholarships (Sport NZ for HPSNZ)*
- *Miscellaneous Grants (Sport NZ)*
- *Sports Anti-Doping (DFSNZ)*
- *Purchase Advice and Monitoring of Sport and Recreation Crown Entities (MCH)*

*Each appropriation has a specific purpose and related accountability/reporting requirements back to Parliament.*

*Regardless of option, it is proposed that a new appropriation is created for the sole purpose of funding the integrity operations of either; (a) Sport NZ Integrity Unit or (b) stand-alone Integrity Organisation. This ensures funding is protected for Integrity and requires specific reporting (both financial and non-financial performance) as part of Government's accountability requirements. This also provides greater levels of transparency through the Government Select Committee annual processes, Estimate Review and Financial Review.*

.....

Under this option, there would be a new Integrity appropriation funded to Sport NZ for the purpose of running the Integrity Unit.

This would require specific financial and non-financial performance measures which would be reported as part of Sport NZ's existing reporting requirements (Statement of Intent, Statement of Performance Expectations & Annual Report).

In addition, with DFSNZ having an expanded mandate into Match-Fixing/Competition Manipulation, the current 'Sports Anti-Doping' appropriation would need to be amended to acknowledge the expanded scope & likely additional funding required.

Sport NZ also receives LottoNZ funding for the purpose of supporting the play, active recreation and sport system. This funding could be applied for the purpose of maintaining/improving related integrity systems, either directly to the sector via Sector Investments, or indirectly through Sport NZ services or other stakeholders.

## Education, Information and Guidance

*This function:*

- *engages with parties in the system to build understanding of the sector and promote integrity standards*
- *provides education, information, guidance, tools and resources to raise awareness of and support compliance with integrity standards, communicating expectations and practices in ways that are easy to find, navigate and understand.*
- *builds capability and assists with capacity of organisations to apply the standards at all levels.*

*Choices include how best to work with system participants to promote compliance without using enforcement tools. This can include a period of preparing organisations, building knowledge, capability, and confidence before the NCSI applies.*

.....

Sport NZ (Integrity Unit) would continue its lead role in this area with a significant focus on engagement and education with the Sector and with athletes/participants, to promote awareness of integrity standards and support capability building. Key activities would include:

- Promoting the importance of the National Code of Sport Integrity (NCSI) - see following section, and the value of compliance.
- Developing and maintaining web-based integrity resources including:
  - Evolving the Community Guidance Portal across all themes of Integrity
  - How to practically interpret and apply best practice
  - Increasing education resources.
  - Maintaining Child Safeguarding and Member Protection Policies and Procedures
- Increasing awareness through strategic communications.
- Leveraging of other Sport NZ programmes:
  - Healthy Active Learning
  - Balance is Better
  - Women and Girls
  - Disability
  - Te Rautaki Māori; and
- Providing education, information, guidance, tools and resources to sector (including athletes/participants) to raise awareness of and support compliance with integrity standards, communicating expectations and practices in ways that are easy to find, navigate and understand.
- Engagement with NZ Athletes' Federation, Athletes Commission, survivors and related groups to ensure education is considered fit for purpose from an athlete/participant perspective.
- Partner-specific support and training embedded in organisation-wide partner planning processes and coordinated with Engagement Calendar.

DFSNZ would continue to educate on anti-doping and clean sport with the addition of Competition Manipulation education.

## Sector Capability

*This function:*

- *engages with parties in the system to build understanding of the sector and promote integrity standards*
- *provides education, information, guidance, tools and resources to raise awareness of and support compliance with integrity standards, communicating expectations and practices in ways that are easy to find, navigate and understand.*
- *builds capability and assists with capacity of organisations to apply the standards at all levels.*

*Choices include how best to work with system participants to promote compliance without using enforcement tools. This can include a period of preparing organisations, building knowledge, capability, and confidence before the NCSI applies.*

.....

Sport NZ (Integrity Unit) would continue to work directly with partners to increase organisational capability in integrity with strong linkage to the NCSI. A possible programme for the start of this process is set out at the end of this table.

Enforcement activities would include enforcement of minimum standards.

Enforcement will be targeted through a defined compliance framework, and enforcement tools will include a spectrum of soft, medium, and hard powers likely phased depending on implementation approach and expected maturity of the NSO/RSO. This could include:

- Issuing warnings for initial non-compliance with the standard.
- Setting a deadline for expected rectification or compliance.
- Withholding funding for ongoing non-compliance.

Other enforcement mechanisms would be available through the Relationship Agreement.

## Governance

*An independent governance structure is paramount, particularly as it relates to managing complaints and wrongdoing.*

*In both options, the Government would appoint a Board whose members are bound by the Crown Entities Act, Sport and Recreation New Zealand Act and other related legislation. Member selection is at the sole discretion of the Government but in both cases, a level of Integrity-related expertise would be desirable.*

*Both A and B are proposing a stronger set of integrity experts within the respective governance structures. In Option A this is in the capacity of an advisory committee or a statutory director of integrity and in B, as a stand-alone Board.*

.....

Sport NZ's Board would continue to consist of Government-appointed members.

A new Integrity Advisory Committee (a Board sub-Committee) would be created. This would comprise a mix of Sport NZ Board members and independent members. The independent members would be appointed by the Sport NZ Board but require formal support from the Minister of Sport and Recreation. Recommended up to 9 members with at least 7 being independent from the Sport NZ Board. Members would be selected in accordance with a skills matrix specifying the following experience:

- Integrity matters as they relate to sport, including international best practice
- Child safeguarding practices
- Complaints processes and alternative dispute resolution (including mediation) services; and
- Athlete/participant representation.

The primary roles of the Integrity Advisory Committee would be to:

- Oversee the operations of the Integrity Unit, integrity-related policy function, SRCMS & Athlete Voice Mechanism (the SRCMS & Athlete Voice Mechanism being independently contracted services).
- Maintain an overview of the integrity landscape more generally (including related functions of Sport NZ/ HPSNZ) and initiate any reviews, research or similar in order to ensure the integrity structures remain fit for purpose and effective; and
- Provide advice and make recommendations to the Sport NZ Board in relation to the first 2 bullet points above.

Sport NZ's Chief Executive would report to the Integrity Advisory Committee in relation to relevant integrity roles and functions including, but not limited to:

- Integrity Unit, including Sports Tribunal Secretariat; and
- Policy function

Or, as an alternative to a separate advisory committee:

- A statutory Director of Integrity within Sport NZ would be established. The purpose of this role would be to provide a greater level of accountability, independence, and focus on how Sport NZ exercises its regulatory powers, functions, and decision-making. The Director of Sport Integrity role would have statutory independence for exercising the powers and functions of the sport integrity regulator, which otherwise sit in Option A with the Sport NZ Board.

#### SRCMS

Would continue as an independent, arm's-length function contracted by Sport NZ through an open tender process.

Offers a wide range of complaints, mediation and counselling services to the sector (athletes/participants, coaches, officials, administrators and entities) free of charge.

#### Athlete Voice Mechanism

Currently being established by Sport NZ/HPSNZ with the intention of being an independent, arm's-length athlete representation group, funded by Sport NZ/HPSNZ. Primarily caters to elite/high performance athletes, coaches and related support teams. Provides advocacy and support back into the respective NSO, SRCMS, HPSNZ or other relevant body.

For both the SRCMS & Athlete Voice, the Integrity Unit would be responsible for contract management and performance monitoring with oversight from the Integrity Advisory Committee.

#### DFSNZ

Would continue to operate as an independent Crown Entity with its own Board but with an expanded mandate into competition manipulation. This is likely to require a slightly different skill mix on its Board, but ultimately at the Government's discretion.

Ideally, amendments will be introduced to the Sport and Recreation New Zealand Act and Sports Anti-Doping Act to acknowledge this expanded role. However this could be partially achieved in the interim via contractual arrangement between Sport NZ and DFSNZ to the extent permitted under the Sport and Recreation New Zealand Act (or via a Ministerial directive)

### Sector Leadership/influence/compliance levers

*While the intention is to create a system the Sector will wish to buy-in to and comply with, various levers are available to ensure there is compliance with the National Code of Sport Integrity (NCSI).*

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Sport NZ (Integrity Unit)

In terms of compliance levers, the priority of the Sport NZ Integrity Unit would be to create an NCSI that sector organisations choose to sign up to, because it provides a user-friendly cost-effective system that the sector and participants can trust to handle integrity issues efficiently, objectively and professionally.

The NCSI would contain minimum requirements for an NSO/NRO (across all of its affiliated clubs/bodies) or other sport / recreation bodies (e.g. major events operators) if it wishes to operate its own integrity complaints system (including standard definitions of what constitutes breaches of integrity) as well as the minimum procedures needed to address complaints/issues.

NSO/NROs who wish to be accredited will need to be assessed by Sport NZ's integrity unit to ensure compliance with the minimum requirements, including auditing/ monitoring of the accreditation. Accredited organisations would then be able to deal with integrity matters using their own systems and procedures.

However, there also needs to be compliance levers to ensure there is broad uptake so that it is a national system. Options include:

- Compliance with the NCSI is written into the Relationship Agreement between Sport NZ and the recipient as a condition of ongoing funding
- Recognition as a national organisation is conditional on compliance with the NCSI (Organisations are incentivised to obtain and retain NSO status so they can list odds at the TAB, access other commercial funding streams and market themselves as the paramount national organisation)
- Every funded partner receives an initial grant (say \$10,000) with provision for allocation to increase over time; and
- In the spirit of partnership and no surprises, a disclosure provision obligation on the NSO/NRO, in the event of an Investigation

### Alternate Participant Pathways/Athlete Participant Support

*This concept is again founded on the need for a system that is athlete and participant focused and builds trust. An independent voice for athletes/participants is available under both options, providing:*

- Advice
- Support
- Victim Support,

*with close alignment to other government agencies such as Office of Children's Commissioner/ Human Rights Commission / Disability Rights Commissioner*

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For High Performance/Elites athletes there is a need for a specialist Athlete Voice Mechanism.

The Athlete Voice Mechanism is intended to be entirely independent of Sport NZ with representation selected by athletes. Outside of professional athletes, athlete representation will require funding support. Sport NZ will have a funding/contract management relationship through the Integrity Unit. The Integrity Advisory Committee would review agreed activity and performance KPIs, including athlete feedback. Key elements of the service include:

- Independent service provider – with representation selected by athletes (operates similar to how you would expect a worker's union).
- Funded by Sport NZ
- Reports to the Integrity Advisory Committee
- Relationship with the SRCMS for resolution/mediation of complaints, along with other bodies with direct athlete relationships including relevant NSOs, HPSNZ, DFSNZ, NZOC etc; and
- Strong working relationships with those entities providing athlete /participant voice

Note: this service is only for Tailored Athlete Pathway athletes

For the community, the following channels would be available to participants in the sector:

- The SRMCS for
  - Independent complaints handling
  - Mediation
  - Counselling via referrals to EAP; and
  - Escalation and referral to other specialist parties when necessary
- Office of Children's Commissioner/ Human Rights Commission Tribunal/Disability Rights Commissioner/ Police/ Oranga Tamariki/ Serious Fraud Squad/Ombudsman
- The provision of an independent EAP function/service is in place for funded partners via the Sport NZ Business Capability Team.

Both the Athlete Voice Mechanism and SRCMS will maintain a close working relationship with the Office of the Children's Commissioner, the Human Rights Commission, and other associated agencies.

## Complaints/ triaging/early investigation

*This function provides a pathway to receive, triage and address complaints. It spans informal early resolution services, guidance to support informal resolution between parties, mediation where an independent mediator helps to resolve an issue, through to referrals to other agencies where appropriate.*

*Choices in designing this function include how to ensure impartiality and independence of the process, including managing inherent conflicts of interests where organisations that are party to a complaint are also resolving it, and how to ensure a fair process for all parties, including appropriate support for the complainant.*

Functions:

- Complaints handling
- Triage
- Early facilitation/resolution
- Counselling
- Māori culturally distinct pathway
- Flexibility to offer other dispute resolution options for different cultures
- Accessibility for hearing/sight impaired/English as second language
- Trauma Informed approach and case handling

*Has an extensive expert panel including expertise in a wide range of integrity matters, bicultural focus, competition manipulation, trauma-informed approaches and sports reviews*

.....

The SRCMS as a function would remain contracted to a third party through Sport NZ. Sport NZ will be the contract manager, whilst the SRCMS would report to the Integrity Advisory Committee against agreed activity and key performance indicators. The Committee would therefore also make the recommendation to the Sport NZ Board on selection of the service provider at the contract renewal points.

The SCRMS would:

- Be referenced in the NCSI as the way to resolve complaints unless NRO/NSO has its own accredited system; and
- Report to the Integrity Advisory Committee.

Under this option the NCSI will require as a baseline, all organisations to sign up to the core functions of the SRCMS.

The triaging will then occur by the SCRMS with a referral back to the NSO/NRO if it has a system in place which is fit for purpose and able to deal with the matter itself.

If the NSO/NRO is not able to deal with the matter itself, the SRCMS will make initial enquiries and assess whether the matter could be assisted by low-level intervention such as education, guidance and training.

Alternatively, it could refer the matter to an investigation or to the case management team where mediation or facilitation could occur (except in anti-doping prosecutions). It would also be an option at the triaging point to refer the matter to another agency such as the police or SFO.

## Intelligence and Monitoring

*This function operates across the system and provides for the ability to:*

- *Receive and analyse information to develop awareness of risks and of systemic issues      Undertake drug testing and gather other case information relating to illegal betting and manipulation of sports competition.*
- *Monitor compliance of organisations with integrity standards and requirements*

*The function will need to be designed to meet national and international obligations, and to prioritise effort in accordance with the strategy.*

.....

DFSNZ and SRCMS would each undertake the Intelligence/ Investigation functions relevant to their scope, and Sport NZ would monitor the system to make sure it is functioning as required and identify where improvements which can be made.

## Disciplinary Panel

*Enforcement activities play an important role to help drive compliance for the most reticent, and for addressing significant breaches of integrity standards. They can also be an important tool to help encourage compliance across a broader range of organisations.*

*This function can include disciplinary hearings, prosecution of cases, the imposition of penalties and other sanctions, and processes for appeals.*

*Choices about enforcement pathways will likely vary across the system and include how to ensure proportionate and equitable application of enforcement and sanctions, and the part played by tools such as warnings, and education and support to comply prior to enforcement.*

*The objective would be for cases to proceed to the Disciplinary Panel only if other forms of intervention were unsuccessful and/or in the most serious or egregious of cases*

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The SRCMS would be expanded to include a Disciplinary Function. The SRCMS would obtain its jurisdiction from the NCSI.

It would utilise the existing Expert Panel and likely add accredited members.

The DP would require a registrar who could be appointed by the SRCMS.

The SRCMS Disciplinary Function would be an optional service for organisations to sign up to beyond the SRCMS baseline services for those requiring an end-to-end service. Alternatively, some organisations have well run disciplinary and sanctioning panels.

There would be a right of appeal from the DP to the Sports Tribunal.

## Sports Tribunal

*The Sports Tribunal is an independent body that determines certain types of disputes for the sports sector.*

*The aim of the Tribunal is to ensure that national sport organisations and other parties to a sports dispute, such as athletes, have access to an affordable, just and speedy means of resolving a sports dispute. The Sports Anti-Doping Act 2006 sets out the sorts of disputes the Tribunal can hear currently. The main types of disputes the Tribunal hears are:*

- *anti-doping violations*
- *appeals against decisions of National Sport Organisations or the New Zealand Olympic Committee – mostly appeals against disciplinary decisions or not being selected for a New Zealand team*
- *other sports related disputes referred by agreement of all the parties*

*The Act also allows the Tribunal to determine its own practices and procedures for performing the Tribunal's functions under the Act. The Rules of the Sports Tribunal are made pursuant to s39 of the Act. These Rules set out how the Tribunal determines disputes.*

.....

Under this Option, there would be changes to the rules of the Sports Tribunal to allow it to decide appeals from decisions of the Disciplinary Panel and an increase in the number of members on Sports Tribunal Panel (requires legislative change) to provide greater depth of expertise and responsiveness.

## DFSNZ

*Drug Free Sport New Zealand is the organisation responsible for keeping New Zealand sport clean and free from doping -working across New Zealand's sporting community to protect clean athletes and promote clean sport.*

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DFSNZ would:

- Maintain its independent Crown Entity status
- Expand its scope to include Competition Manipulation
- Retain a catch-all jurisdiction to perform any other functions the Minister may direct under the Crown Entities Act.

This may require legislative change but can potentially be managed in the interim with Sport NZ 'contracting' these additional services. May also require change to match-fixing legislation if additional regulatory and information-sharing powers are deemed necessary

## Transition

*Arrangements will be needed to ready the Sector for these changes and to achieve “buy-in” and understanding of the NCSI*

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Under Option A:

- Phase 1 – All partners to achieve baseline standard of integrity (Compliance with NCSI). Partners may need to amend rules/ constitutions to incorporate the new system.
- Phase 2 – Moving to a Maturity Model to increase capability
- Phase 3 – Commencement of enforcement measures
- Supported by an increase in baseline partnership investment funding annually - 1 July 2022
- Becomes part of the annual partnership funding conversations – December 2021
- Developing tools to guide self-assessment (underway)
- Issue opinions or policy statements to refine or clarify points of interpretation.
- Operating a verification/certification/accreditation approach to support partners
- Building Integrity standards/ compliance with NCSI into Relationship Agreements

## OPTION B – Time for a New Approach?

10.19 Option B, in contrast, represents a much more significant change. Under this option, a new stand-alone Integrity Organisation would be created (for the purposes of this report referred to as SIO) which would operate quite independently of Sport NZ and which both DFSNZ and the team within Sport NZ currently focused on integrity would fold into.

10.20 The underlying rationale for this option is that it is not possible to achieve the design objectives and principles and genuinely raise the standard of integrity across the Sector unless we create an independent agency with a singular focus on advocating for the safety and the fundamental human rights of athletes and participants - and that agency cannot be the same agency which funds and supports our national sport and national recreation organisations.

10.21 Option B is designed with three drivers most strongly in mind - to provide actual/perceived independence; to provide a simpler, less cluttered system; and to be strongly athlete/participant-centred and informed.

10.22 Further detail regarding Option B, including the functions needed and how Option B would seek to deliver those functions, is set out in the following table. As with the previous table, the first part of the table describes the generic function which needs to be performed – the second part describes how Option A would provide that function.

## System Stewardship

*This function provides a kaitiaki role, as guardian of the system. It takes a whole-of-system view, monitoring, reporting and evaluating the effectiveness of efforts to inform strategy, and changes to the system design and operation.*

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The SIO would assume overall management/regulation of the integrity system including anti-doping and competition manipulation.

Sport NZ would continue to provide policy and ministerial servicing functions

MCH would continue its appointed monitoring role on behalf of the Minister for Sport and Recreation

## Cross Government Relationships

*Partners and coordinates with other national and international bodies outside of the Play, Active Recreation and Sport sector that have a role in strengthening understanding of and compliance with integrity standards; achieves escalation to a government agency when needed.*

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Sport NZ and the SIO would carry out this role as it relates to their specific functions.

Strong relationships would be needed with, inter alia:

- Human Rights, Disability and Children's Commissions
- MCH as the monitoring agency
- NZ Police, Customs, Serious Fraud Office and other enforcement agencies
- TAB and Racing Integrity Board

## Legislation

*In terms of potential changes to legislation:*

### **Sports Anti-Doping Act**

*From an operational perspective, this legislation is deemed largely fit for purpose in its current form. However the Act will ultimately be required to change to reflect proposed amendments under Option A and B.*

### **Match-Fixing Legislation**

*Assuming the New Zealand Government becomes a signatory to the Macolin Convention there will be a requirement to review the current legislation against the Convention and align where possible.*

### **Sport and Recreation New Zealand Act**

*This is the founding legislation for Sport NZ (formerly Sport and Recreation NZ) which establishes its functions including responsibility for integrity matters. If additional regulatory powers are sought under option A or B, then amendments may be required.*

*Under both Option A and B the Sport NZ Policy function will maintain responsibility for advising Government on any legislative matters as they relate integrity, including any amendments & impact.*

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### **Sports Anti-Doping Act**

DFSNZ would be subsumed into the SIO which inherits responsibility for operationalising the Act.

This will require legislative change to reflect the change in entity and any additional regulatory/investigatory powers that are sought.

This could be done by substantial amendment (and renaming) of the current Act or, as a preference, new legislation which replaces the current Act.

Sport NZ will be responsible for progressing legislative changes.

### Match-Fixing Legislation

Assuming the New Zealand Government become signatory to Macolin Convention, the SIO would:

- ensure complementary standards, advice and guidance is produced and communicated
- Ensure its approach to monitoring and regulating is aligned to the standards within the Convention and legislation.

Sport NZ will be responsible for progressing legislative changes.

### Sport and Recreation New Zealand Act

Will require legislative change to recognise the SIO and its related powers/ functions. It maybe that an entirely new Act is created for this purpose.

Sport NZ will be responsible for progressing legislative changes.

## Policy - Government

*Advice and Ministerial Servicing to the Minister of Sport & Recreation; Advising on and development of legislation and regulation; Administering the Sports Anti-Doping Act; WADA Code*

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Sport NZ retains its policy function. This is separate to the SIO but with a close working relationship to understand policy in practice and vice versa. This also ensures there are no issues with compliance with the WADA Code which insists on the independence of national anti-doping agencies.

## Operational Policy - Sector

*Setting standards for participants in the system to meet national and international expectations and obligations.*

.....

The SIO will have this role.

## Funding

*The current appropriations under Vote Sport & Recreation are:*

- Sport & Recreation Programmes (Sport NZ)
- High Performance Programmes (Sport NZ for HPSNZ)
- Prime Minister's Scholarships (Sport NZ for HPSNZ)
- Miscellaneous Grants (Sport NZ)
- Sports Anti-Doping (DFSNZ)
- Purchase Advice and Monitoring of Sport and Recreation Crown Entities (MCH)

*Each appropriation has a specific purpose and related accountability/reporting requirements back to Parliament.*

Regardless of option, it is proposed that a new appropriation is created for the sole purpose of funding the integrity operations of either; (a) Sport NZ Integrity Unit or (b) stand-alone Integrity Organisation. This ensures funding remains protected for Integrity and requires specific reporting (both financial and non-financial performance) as part of Government's accountability requirements. This also provides greater levels of transparency through the Government Select Committee annual processes; Estimate Review and Financial Review.

.....

Depending on the type of legal structure the SIO becomes, will depend on how it is funded and the corresponding accountability requirements (refer Governance Structure below).

Assuming it is created as an Independent Crown Entity (ICE) under the Crown Entities Act 2004, the new integrity appropriation would be funded directly with the corresponding accountability requirements of an ICE.

Given the Integrity Organisation would also subsume existing DFSNZ functions, the existing 'Sports Anti-Doping' appropriation should also transfer to the new entity.

As with Option A, it may be possible to also expand the scope of the 'Sports Anti-Doping' appropriation to incorporate match-fixing/competition manipulation. Alternatively, under this option the scope of the new integrity appropriation could include this function.

The SIO should be able to apply for Sport NZ sector investment (funded by LottoNZ).

There may also be scope to attract some philanthropic/commercial support for the SIO and also TAB Gaming funding, the rationale being that the SIO will be taking actions that will help protect the integrity of sports betting.

## Education, Information and Guidance

*This function:*

- engages with parties in the system to build understanding of the sector and promote integrity standards
- provides education, information, guidance, tools and resources to raise awareness of and support compliance with integrity standards, communicating expectations and practices in ways that are easy to find, navigate and understand.
- builds capability and assists with capacity of organisations to apply the standards at all levels.

*Choices include how best to work with system participants to promote compliance without using enforcement tools. This can include a period of preparing organisations, building knowledge, capability, and confidence before the universal code of conduct applies.*

.....

The SIO would take the lead role here with a significant focus on engagement and education with organisations and with athletes/participants, to promote awareness of integrity standards, the importance of keeping athletes/participants safe from harm and to support capability building. Key activities would include:

- Promoting the importance of the National Code of Sport Integrity (NCSI) - see following section, and the value of compliance.
- Developing and maintaining an integrity website including
  - Evolving Sport NZ's Integrity Portal across all themes of Integrity
  - How to practically interpret and apply best practice
  - Increasing education resources.
  - Maintaining Child Safeguarding and Member Protection policies and procedures
  - Increasing awareness through strategic communications.

- providing education, information, guidance, tools and resources to sector (including athletes/participants) to raise awareness of and support compliance with integrity standards, communicating expectations and practices in ways that are easy to find, navigate and understand.

The overall goal of the education programme will be to lift the capability of the Sector to create environments that keep participants safe from harm, to recognise integrity issues and to respond appropriately. This will include educating the sector on those areas where the SIO can itself provide the capability that a club, regional or national body cannot.

- Strong engagement with NZ Athletes' Federation, Athletes Commission, survivors and related groups to ensure education is considered fit-for-purpose from an athlete/participant perspective and is survivor informed; and
- Close liaison with Sport NZ to ensure its programmes are complementary to Sport NZ's health, wellbeing and other capability-related projects.

## Sector Capability

*This function:*

- *engages with parties in the system to build understanding of the sector and promote integrity standards*
- *provides education, information, guidance, tools and resources to raise awareness of and support compliance with integrity standards, communicating expectations and practices in ways that are easy to find, navigate and understand.*
- *builds capability and assists with capacity of organisations to apply the standards at all levels.*

*Choices include how best to work with system participants to promote compliance without using enforcement tools. This can include a period of preparing organisations, building knowledge, capability, and confidence before the universal code of conduct applies.*

.....

The SIO would work directly with organisations to increase organisational capability in integrity aligned to the NCSI.

A close working relationship with Sport NZ's capability team would be essential in that regard.

Programmes would be developed to build capability and assist with capacity of organisations - but when needed, the SIO can itself provide capability that a club, regional or national body may not be able to.

## Governance

*An independent governance structure is paramount, particularly as it relates to managing complaints & wrongdoing.*

*In both options, the Government appoints a Board whose members are bound by the Crown Entities Act, Sports and Recreation New Zealand Act and other related legislation. Member selection is at the sole discretion of the Government but in both cases would assume a level of Integrity related expertise would be desired.*

*Both A and B are proposing a stronger set of integrity experts within the respective governance structures. In Option A this is in the capacity of an advisory committee and in B, as a stand-alone Board.*

.....

Assuming it is created as an Independent Crown Entity (ICE) under the Crown Entities Act 2004, the board of the SIO will be Government appointed. However, by having an exclusive integrity focus, this will allow for the appointment of a more specialist Board relevant for the functions of the SIO and is a direct response to the Sector's desire for actual/perceived independence from Sport NZ.

Appointments would be made by Ministerial decision informed by a skills matrix which recognises the value of diversity and the principles of the Treaty but with potentially the following mix:

- given the importance of an athlete/participant focused approach, at least two of the board to have a recent athlete/participant background and/or significant and recent experience advocating for athlete/participants
- given the importance of developing solutions which recognise Māori tikanga as well as other culturally appropriate options for resolution, at least two directors with expertise in these areas
- at least three of the directors to have strong subject matter expertise in integrity matters as they relate to sport, including anti-doping and also international trends (one of whom would be the initial Chair)
- the remaining directors to provide a different and complementary skill set including governance, in law (if not covered above) change management, human rights and community and high-performance sport and recreation.

The Board would operate in a standard governance capacity for an ICE with the Chief Executive of the SIO reporting to it – and with the Chief Executive him/herself responsible for the overall operational delivery of all aspects of the SIO's functions.

The operational structure of the SIO would be headed by a Chief Executive, with management (and staff) to carry out the core functions of the SIO (education, promotion and capability building; operational policy and standards; intelligence, monitoring and investigation; dispute resolution; and sanctions and enforcement).

It is anticipated that most of the staff from DFSNZ, and those carrying out any of these integrity functions in Sport NZ, would (subject to consultation) be offered ongoing roles with the new SIO.

The triaging, case management, facilitation and mediation services currently contracted to SCRMS would be the responsibility of the SIO and could be brought in-house or contracted out (in whole or in part).

As noted in the final section of this table, a Transition Board would need to be established to ensure the project continued to progress during the establishment phase.

### Sector Leadership/influence/compliance levers

*While the intention is to create a system the Sector will wish to buy-in to and comply with, various levers are available to ensure there is compliance with the National Code of Sport Integrity (NCSI).*

.....

In terms of compliance levers, the priority of the SIO would be to create a National Code of Sports Integrity (NCSI) which sector organisations choose to sign up to, because it sets clear minimum standards it wants its sport/recreation activity to commit to and abide by, and outlines a user-friendly cost-effective mechanism to deal with problems as they arise

The NCSI would contain minimum requirements for an NSO/NRO (across all of its affiliated clubs/bodies) or other sport / recreation bodies (e.g. major events operators) if it wishes to operate its own integrity complaints system (including standard definitions of what constitutes breaches of integrity) as well as the minimum procedures needed to address complaints/issues.

NSO/NROs who wish to be accredited will need to be assessed by the SIO to ensure compliance with the minimum requirements, including auditing/ monitoring of the accreditation. Accredited organisations would then be able to deal with integrity matters using their own systems and procedures.

However there also needs to be compliance levers to ensure there is broad uptake so that it is a national system. There are at least three possibilities here:

1. For Sport NZ-funded NROs/NSOs, Sport NZ to continue to provide its current funding to NROs/NSOs but its relationship agreements with these entities are amended to make it clear that adoption of and compliance with the NCSI by a set date (including by all members affiliated to the NSO/NRO) is a prerequisite to receiving all (or at least a percentage) of that funding - and that in turn is subject to an annual report from the SIO that such compliance is occurring. For all Sport NZ "recognised" NSOs/NROs, removal of recognition by Sport NZ in the event of not adopting the NCSI or a non-compliance report from the SIO.
2. There is a new allocation and/or reallocation of the current appropriation to Sport NZ with a percentage of that funding instead being allocated to the Agency which in turn distributes funding to sector bodies subject to compliance with the NCSI.
3. In the SIO establishment legislation, a requirement could be included that adoption and compliance with the NCSI is compulsory. Application of the NCIS across the Sector would be similar to the application of anti-doping rules as provided for under rules made under Part 2 subpart 3 (Rules) of the Sports Anti-Doping Act 2006.

The second of these possibilities is not favoured because it compromises the independence of the SIO, and independence is one of the key drivers for its creation.

Each of the other two options have merit.

# 1 has the advantage of letting organisations see the merit of the system and "buy in" over time while also giving scope for sports with a fit for purpose system to maintain that system. It also is an option most of the Sector will be familiar with and may be more likely to support. However #1 arguably leave gaps in coverage especially at community level as Sport NZ does not have arrangements with all organisations across the Sector

Under # 3, minimum standards would apply across the sector but flexibility and the freedom for sports and their athletes/ participants to design their own system would inevitably be more limited.

A number of members of the IWG support the establishment of the NCSI in legislation (#3 above) on the understanding that the Code will be largely principle-based and will provide reasonable flexibility for national organisations to have their own system for dealing with integrity, providing that system has all the necessary core ingredients. It was felt this was the best way to ensure minimum standards applied across the entire sector, including at community level.

However concern was expressed by some members that, for sports that already have strong athlete representation and have already negotiated an approach to deal with integrity concerns (that may, for example, already be enshrined in a collective agreement), a legislated code could unfairly impinge on their rights, that it is not a set of terms that have been bargained for and agreed by the parties and will lack the required trust and accountability.

This debate is part of the challenge of designing a system which accommodates both community and high-performance needs.

On balance, the majority of the IWG believe the key will be to ensure the NCSI is genuinely developed with and by athletes/ participants - with the mandatory sections containing no more than the fundamental human rights and minimum standards no one would ever question.

However, whether the NCSI is best introduced and enforced through legislation or via compliance levers is a matter that will require further consideration in the next stage of this project.

### Alternate Participant Pathways/Athlete-Participant Support Unit

*This concept is again founded on the need for a system that is athlete and participant focused and builds trust. An independent voice for athletes/participants is available under both options, providing:*

- Advice
- Support
- Victim Support

*with close alignment with other government agencies such as Office of Children's Commissioner/ Human Rights Commission / Disability Rights Commissioner*

.....

Under Option B a new unit or office would be established focussed on providing athlete/participant support during a compliant/dispute process. This concept is similar to the Sport Ombudsman proposed in the Muir/Rooney report but with some key differences.

The concept is that as issues arise and are referred to the Complaints Service (currently the function of the SRCMS) for triaging, where the SIO identifies that the athlete/participant needs specific support, he/she is made aware of the existence of the Support Unit.

This would be a small unit (in all likelihood independent of the Agency though funded by it) whose sole role would be to advance the interests of the athlete/participant. The functions would include (where appropriate):

- A Victim Support Service/ EAP counselling that the Support Unit would either provide in-house or outsource (likely to be dependent on budget).
- Access to legal support/legal aid and/or the maintenance of a list of lawyers willing to do pro bono or discounted work in this area for athletes/ participants.
- Having a strong working relationship with entities providing athlete /participant voice and/or representation.
- Maintaining a close working relationship with the Office of the Children's Commissioner, the Human Rights Commission, and other associated agencies; and
- Being engaged in policy and NCSI development and giving feedback on the SIO's performance – but note the Support Unit would NOT be an athlete voice mechanism.

The Unit may need to be established as a separate legal entity to ensure its independence from the SIO so it can act in its own right (e.g. employ staff, contract with Victim Support agencies etc). It may also need to develop/add to its services over time demanding on the level of demand for its services and the financial resources available.

### Complaints/ triaging/early facilitation

*This function provides a pathway to receive, triage and address complaints. It spans informal early resolution services, guidance to support informal resolution between parties, mediation where an independent mediator helps to resolve an issue, through to referrals to other agencies where appropriate.*

*Choices in designing this function include how to ensure impartiality and independence of the process, including managing inherent conflicts of interests where organisations that are party to a complaint are also resolving it, and how to ensure a fair process for all parties, including appropriate support for the complainant.*

*Functions:*

- *Complaints handling*
- *Triage*
- *Early facilitation/resolution*
- *Counselling*
- *Māori culturally distinct pathway*
- *Flexibility to offer other dispute resolution options for different cultures*
- *Accessibility for hearing/sight impaired/English as second language*
- *Trauma-informed approach and case handling*

*Has an extensive expert panel including expertise in a wide range of integrity matters, bicultural focus, competition manipulation, trauma-informed approaches and sports reviews*

.....

All of the functions listed above (triaging, early facilitation, mediation, etc) will be provided by the SIO under Option B. However, the scope of the service will need to be refined and broadened slightly so that it functions slightly differently.

When a matter is referred to the SIO, it will be triaged with a referral back to the NSO/NRO if that entity is accredited.

If the NSO/NRO is not accredited, the complaint will be triaged by staff with legal and practical expertise who will make initial enquiries and assess, in discussions with the complainant, whether the matter could be assisted by low-level intervention such as education, guidance and training. Alternatively the matter could be referred for investigation, to the testing and compliance team or to mediation or facilitation (except in anti-doping prosecutions). It would also be an option at the triaging point to offer a solution which is appropriate for the differing needs of the participants (e.g. cultural). In some cases too, the matter may need to be referred to another agency such as the police or SFO.

In terms of the existing contract with the SCRMS provider, the SIO would need to assess whether it wished to provide these services in-house or outsource the services to a third party.

As noted earlier, sports and active recreation organisations will continue to govern on-field/in-activity issues and those matters, if the subject of complaint, would be referred, at triaging, back to the Sector.

One remaining issue is the extent to which there should be a positive obligation on the Sector (and the athletes/participants within it) to refer all integrity issues to the SIO for triaging or whether this should occur at the election of any one of the participants. A number of IWG members felt that if the athlete/participant and the sport/active recreation organisation wished to try to resolve the matter together, they must be able to do so, supported by, say, quarterly reporting or similar and always with a right on any party to escalate to the SIO if necessary. There was also concern about the scale of the SIO and the potential cost if every single issue touching on integrity at all levels of the Sector had to be referred to the SIO. The view was also expressed that, in an athlete/participant-centred system, the athlete/participant should not be forced to escalate their issue to a central agency if they would prefer a less formal (and/or local) attempt to reach a solution.

Under this approach, the participants in an integrity issue would have the right to attempt to deal with the issue in accordance with the NCSI but any of the participants would have the right to involve the SIO if they were dissatisfied.

However that was by no means a universal view within the IWG with concern expressed that this this was still a case of "sport policing sport" and carried too much inherent risk for the athlete/participant. The proponents of this view felt all issues should be referred to the SIO for triaging, and that integrity issues are too important for non-accredited sports to attempt to resolve. Those with this view also felt if the use by organisations of the SIO is left optional, there will continue to be many different processes for complaints and resolution in the Sector and there would remain too much complexity to the integrity system from an athlete/participant point of view.

One potential solution, at least initially, may be to not require all issues to be referred to the SIO at the initial stage of this project and to instead give participants the choice to do so – but to review the effectiveness of the system and the level of demand on the SIO's service after say, 24 months, as well as the satisfaction level of participants, with a particular focus on this issue.

Either way, this issue will require consideration in the next stage of this project.

## Investigations

*Investigations will be needed from time to time, by independent subject matter experts.*

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The SIO would be responsible for:

- Preparing terms of reference for investigations of an integrity matter, appointing an investigator, reviewing the final report, and monitoring implementation and ongoing compliance.
- In instances where there are other systemic issues beyond those related to integrity, the SIO would have the expertise to lead such a review working collaboratively with the NSO/NRO, Sport NZ/HPSNZ and participants.

## Intelligence and Monitoring

*This function operates across the system and provides for the ability to:*

- Receive and analyse information to develop awareness of risks and of systemic issues
- Undertake drug testing, and gather other case information including in relation to illegal betting and manipulation of sports competition.
- Monitor compliance of organisations with integrity standards and requirements

*The function will need to be designed to meet national and international obligations, and to prioritise effort in accordance with the strategy.*

.....

The new Agency would be responsible for:

- Intelligence - sourcing information and evidence related to potential breaches of the NSCI, non-compliance with the legislation and accreditation requirements on organisations; and
- Monitoring the system to make sure it is functioning as required and identifying where improvements which can be made

These functions will sit alongside the monitoring and intelligence activities needed in anti-doping and competition manipulation.

## Disciplinary Panel

*Enforcement activities play an important role to help drive compliance for the most reticent, and for addressing significant breaches of integrity standards. They can also be an important tool to help encourage compliance across a broader range of organisations.*

*This function can include disciplinary hearings, prosecution of cases, the imposition of penalties and other sanctions, and processes for appeals.*

*Choices about enforcement pathways will likely vary across the system and include how to ensure proportionate and equitable application of enforcement and sanctions, and the part played by tools such as warnings, and education and support to comply prior to enforcement.*

*The objective would be for cases to proceed to the Disciplinary Panel only if other forms of intervention were unsuccessful and/or in the most serious or egregious of cases*

.....

The Disciplinary Panel (DP) would obtain its jurisdiction from the NSCI and legislation. The NSCI would set out the composition/appointment, powers and procedures of the DP.

The DP would consist of a panel of accredited members across New Zealand and, while independent of the SIO, would be funded by it. The DP would need a registrar who could potentially be the same registrar as the registrar for the Sports Tribunal, and a Chair who would need to be a lawyer of some standing.

The Chair of the DP would be appointed by the Minister and to ensure it had appropriate powers, the DP may need establishing legislation.

The DP would conduct hearings in relation to alleged integrity breaches and have jurisdiction to impose sanctions. The IWG believes the DP should function in an inquisitorial capacity, with proceedings conducted as informally and cost effectively as possible.

Some care would be needed to ensure the workload of the DP was manageable. A triaging system that encourages the parties to use other, less formal means of resolution should help ensure that is the case – but this issue will need to be considered further in the design development phase of the project.

Care would need to be taken to ensure there was encroachment on the exclusive jurisdiction of the Employment Relations Authority and Employment Court to hear employment related disputes, by ensuring that its remit related solely to the “non employment” aspects of a person’s role.

So for example, a male hockey coach of a regional team alleged to have sexually harassed<sup>42</sup> a 19-year-old female player could, if other interventions (such as mediation) were unsuccessful or considered inappropriate, ultimately face a hearing before the DP. However, if he was also employed as the club manager, his status in that capacity would remain an issue for the club to be dealt with in accordance with employment law). As there could be both employment and sporting sanctions, these processes may operate in parallel.

In such a case, the organisation could also come before the DP if, for example, it had failed to put in place appropriate safeguards as required by the NCSI.

NSOs/NROs (and their affiliated members bodies) and other entities using the SIO who are not accredited would need to amend their constitutions to accept the jurisdiction of the SIO. A reasonable timeframe to do this would be needed, as AGMs or special general meetings would need to be held to adopt such changes. These entities may also need legal support with the drafting of such changes.

Although the intent is that few cases would need to progress as far as a formal disciplinary hearing (with a strong focus on early facilitation, alternative forms of dispute resolution, etc) in cases where a hearing was needed, the SIO would serve as prosecutor before the DP, much as DFSNZ does in anti-doping cases before the Sports Tribunal.

## Sports Tribunal

*The Sports Tribunal is an independent body that determines certain types of disputes for the sports sector.*

*The aim of the Sports Tribunal is to ensure that national sport organisations and other parties to a sports dispute, such as athletes, have access to an affordable, just and speedy means of resolving a sports dispute. The Sports Anti-Doping Act 2006 sets out the sorts of disputes the Sports Tribunal can hear currently. The main types of disputes the Tribunal hears are:*

- *anti-doping violations*
- *appeals against decisions of National Sport Organisations or the New Zealand Olympic Committee – mostly appeals against disciplinary decisions or not being selected for a New Zealand team*
- *other sports related disputes referred by agreement of all the parties*

42 These would not be allegations of a criminal nature – if they were then they would be referred to the Police.

*The Act also allows the Sports Tribunal to determine its own practices and procedures for performing the Sports Tribunal's functions under the Act. The Rules of the Sports Tribunal are made pursuant to s39 of the Act. These Rules set out how the Tribunal determines disputes.*

.....

Under this Option, the Sports Tribunal would continue to have exclusive jurisdiction for anti-doping matters and have a new jurisdiction to hear appeals from the DP (or from disciplinary panels conducted by accredited sports).

It is likely there would need to be an increase in the numbers of members of the Sports Tribunal (requires legislative change).

## DFSNZ

*Drug Free Sport New Zealand is the organisation responsible for keeping New Zealand sport clean and free from doping -working across New Zealand's sporting community to protect clean athletes and promote clean sport.*

.....

DFSNZ would form part of the SIO.

## Transition

*Arrangements will be needed to ready the Sector for these changes and to achieve "buy in" and understanding of the NCSI*

.....

It is recommended that a Transition Board be established to ensure the project continues to progress during the establishment phase including the drafting of the NCSI, accreditation system, etc.

It is recommended that any Transition Board includes a range of subject matter experts including.

- strong athlete/survivor involvement
- persons with a strong understanding of the regulatory framework/machinery of government and how best to achieve the legislative tasks required in Option B
- persons with a strong understanding of the roles/functions of DFSNZ and anti-doping; and
- at least some members of the IWG to ensure the extensive learnings from this project are not lost.

The Transition Board will also need to further consider those issues not yet fully resolved by the IWG (primarily, compliance levers and mandatory/non-mandatory reporting) in close consultation with the Sector.

## 11. Analysis

11.1 As noted earlier, the IWG took these two options to the Sector representatives listed in Appendix 4 to obtain their feedback.<sup>43</sup> The individuals and groups spoken to at this stage of the project are listed at Appendix 4.<sup>44</sup> Some very clear and helpful themes emerged during this process.

11.2 Essentially:

- No-one thought the current arrangements were sufficient.
- Almost all feedback strongly supported Option B, primarily because it was considered to better achieve actual and perceived independence. Many also saw advantages of accessibility and efficiencies in a one-stop shop, and clearer accountabilities. Others commented that an entity dedicated to integrity would ensure a sustained focus on the issues, noting that there is significant cost to ineffective arrangements.
- A few noted that any new arrangements should be proportional to the problem they are intended to address. They identified the need for a clear problem definition and an assessment of its scale, as well as objectives and measures of success. This would assist judgements on optimal arrangements.
- A widely held view was that any future system must have a strong focus on prevention, achieved through education and capability building of national organisations and clubs as the entities that must hold responsibility.
- A small number thought both options could work, although most of these also expressed a preference for Option B. A small number raised points for consideration but did not express an explicit preference.
- There was universal support for a NCSI.
- The SRCMS was understood to be working well for those who had used it, but needed greater profile and reach.
- Interviewees who commented on the participants' support unit were supportive, as long as it was available to everyone.
- Some interviewees noted that both options could make stronger links to international obligations.
- Many interviewees raised questions of detail that will be important to consider and address in the next phase.

11.3 In terms of key themes:

### Independence and trust

- Almost all interviewees identified independence and trust as critical to the success of any future arrangements.
- Most interviewees considered that athletes/participants would not trust an entity that had responsibility to both promote and police sport and was subject to changing priorities and strategic direction. They felt that an integrity system with greater independence would ensure that:
  - integrity remains the core purpose and focus, sustained over the long-term
  - there is a safer and clearer pathway for participants.
- Some commented that trust might be reduced if one entity both promotes integrity and prosecutes breaches.
- A few commented that a new national entity would not be sufficient to ensure complaints surfaced and would need strong community connections and cultural capability to facilitate participation.

### Athlete and participant centred

- Almost all interviewees emphasised the critical importance of an athlete- and participant-centred approach.
- The single agency approach in Option B was supported by many due to its simplicity, translating to ease of use for participants.
- Some highlighted the need for any future arrangements to accommodate diversity and address human rights matters and welcomed the connection to the Human Rights Commission provided in both options.
- Some noted that any athlete voice mechanism should represent all participants in the system, rather than a select few high-performance athletes.

### Sector capability and capacity

- Interviewees generally agreed that most national organisations have limited capability and expertise to prevent and manage integrity issues, especially in the current environment. There is an even greater challenge at local/community level. It is likely that national organisations would welcome the opportunity to pass complaints to another entity in the system.
- The ultimate responsibility for integrity is held by the national organisation and through them, clubs/ community organisations. Any new model will need to provide strong support to build capability and achieve compliance, which should not be burdensome.

<sup>43</sup> The interviews during this part of the process were conducted by the Chair of the IWG and representatives of MartinJenkins, summary notes were then prepared, signed off by the participants and shared with the full IWG.

<sup>44</sup> "Proposed Solutions to Addressing and Preventing Trauma in Sport" – a paper to Hon. Grant Robertson, 1/11/21

### System approach

- Some interviewees noted that integrity issues were societal and required a focus on behaviour change.
- Many commented that there should be an 'end-to-end' system approach, with a focus on the 'top of cliff' to prevent integrity issues from arising, as well providing the 'bottom of cliff' to manage issues if issues arise.
- Some identified the risk of becoming too focused on enforcing compliance and the burden this would impose on under-resourced national organisations.

### Relationships and accountabilities between entities in the models

- Some commented that in Option B there is the potential for overlap and duplication between the new entity and Sport NZ. This would need to be worked through carefully in the detailed design so that mandates and functions were clearly delineated. In particular:
  - Responsibilities for capability building, education and promotion on integrity
  - Where policy lies in the model
- They recognised that the new entity in Option B would require a close, collaborative, and cooperative relationship with Sport NZ to leverage efficiencies and effectiveness.

11.4 The IWG carefully considered that feedback, which helped inform its analysis of the two options against the design objectives and principles. In looking at the two options against the design objectives and principles, the IWG considered that:

*Supports an **athlete and participant centred** approach, including athlete and participant voice, and facilitates trust by accommodating the varying needs of participants in the system.*

- a) This design objective is better met by Option B.
- b) Sport NZ's primary customers are national sports and recreation organisations – they are who it recognises, they are whom it primarily funds, and they are the primary delivery channel for many of its programmes. Sport NZ undoubtedly endeavours to operate with the best interests of the athlete/participant in mind, and its vision ("to see Every Body Active in Aotearoa New Zealand") is inherently focussed on the athlete/participant. But by its very nature, it is difficult for it to be viewed by the Sector as strongly athlete/participant centred given its funding role and its role as the overall kaitiaki of the system.

- c) A new agency which has a singular focus on personal, organisational and competition integrity, and which does not fund the Sector, has a much better opportunity to be truly athlete/participant focussed – particularly because it has the opportunity to genuinely involve athletes/participants (and in particular survivors of trauma/abuse) in the design of all of its services.
- d) In this regard, the IWG acknowledges the work of Dr Georgia Cervin and Olivia Jöbsis and the many excellent concepts outlined in their paper "*Proposed Solutions to addressing and preventing Trauma in Sport*"<sup>45</sup> which they were kind enough to share with the IWG. In that paper, the authors emphasise, among other things, the need in any new system to offer solutions informed by and involving specialist expertise in sport and human rights and by people with lived experience of harm.
- e) That paper proposes two solutions to address and prevent trauma in sport which align, at least at high level, with the proposed creation in Option B of a SIO and a unit skilled in supporting people who have been harmed.

*Provides a **simple, accessible system designed for Aotearoa New Zealand** that covers all dimensions of integrity across the play, active recreation and sport system.*

- f) This design objectives are also better met by Option B.
- g) While the IWG believes Option A would unquestionably improve the accessibility of the current system (through the broadening of scope of the SRCMS) it still leaves multiple players in the integrity space, with no one agency singularly focused on the safety, security and well-being of our athletes and participants - and in ensuring the Sector complies with internationally recognised human rights and the principles of Te Tiriti o Waitangi as they relate to integrity matters.
- h) The role of DFSNZ is important in this regard. Several people in the Sector commented very favourably on the way DFSNZ is operating at present, particularly the emphasis it is placing on education and on endeavouring to prevent doping across all levels of the sport sector, including at community level. The view was expressed that if DFSNZ were to form part of a wider agency, it would be important that it did not lose focus on anti-doping. However, the IWG took some heart from its discussions with representatives of DFSNZ<sup>46</sup>, who spoke with considerable enthusiasm about the potential for DFSNZ to be part of a SIO and to be able to apply DFSNZ's learnings over many years across the range of integrity issues. The representatives of DFSNZ also expressed complete confidence that its anti-doping role would not be diluted under this option, noting that the SIO could retain a dedicated team for anti-doping, with its own

45 "Proposed Solutions to Addressing and Preventing Trauma in Sport" – a paper to Hon. Grant Robertson, 1/11/21

46 The IWG met on two occasions with the Chair Tim Castle and CEO Nick Patterson.

key performance indicators. Overall, its representatives felt Option B offered a much more streamlined system and that the extensive skills and expertise DFSNZ already has in education, complaints handling, investigations, intelligence and monitoring could be utilised across all areas of integrity under this option.

- i) The IWG agrees with that view, albeit with the caveat that it will be important any new SIO is not simply an expansion of DFSNZ – but is a new unit with a cross section of skills and experiences across the integrity space.
- j) Nevertheless, the sense that current system is cluttered, confused and inconsistent was shared by many of those with whom we consulted.
- k) The introduction of a NCSI, as a cornerstone of the system, can help remove some of that clutter, confusion and inconsistency by making fundamental obligations clear and by strengthening compliance. But while both options are founded on the introduction of the NCSI, only Option B supports the code with an independent, stand-alone entity covering all core aspects of integrity.
- l) In our view, an SIO helps ensure Aotearoa/New Zealand can have a simpler, more accessible system.

*Enables a **more consistent interpretation and application of integrity standards** across the system, meeting national and international obligations*

- m) Because both options are founded on the introduction of the NCSI, both options should enable a more consistent interpretation and application of integrity standards meeting national and international obligations.
- n) Ultimately though, a system such as this will only be accessed if it is simple to use and easy to understand and if it is trusted by participants. For the reasons set out in this report, the IWG believe Option B is stronger in that regard.

*Achieves **actual and perceived independence and independent decision-making** which fosters the support, confidence and trust of participants in the system.*

- o) Unquestionably, the most common theme in all of the feedback provided to the IWG about what a fit for purpose integrity system needs to include was the concept of independence and the trust that creates. We were told, time and time again, that there is a lack of trust in the ability of Sector organisations to deal with integrity issues objectively and to support those who have experienced trauma. Conflicts of interest abound, objectivity is often lacking, and the issues are sometimes very complex and require skilled practitioners to navigate<sup>47</sup>.

- p) And equally, there was a strong sense that Sport NZ's ability to act objectively and independently in addressing integrity issues is constrained by its close relationships with Sector organisations, and its role as the main funder of the Sector. Athletes/participants also claimed there is a reluctance to raise issues with Sport NZ because of the fear this could impact on the funding needed by them and their sport.
- q) Option A endeavours to create greater independence within the current Sport NZ/SCRMS framework. But while actual independence is unquestionably improved under Option A<sup>48</sup>, under this option the integrity team within Sport NZ still remains part of Sport NZ, the responsibility to educate and inform the Sector remains the final responsibility of Sport NZ, and Sport NZ still contracts the SRCMS provider, funds that service and assesses its effectiveness.
- r) The IWG believes Option B provides a better solution in that it allows Sport NZ to maintain its overarching leadership role for the Sector while a specialist independent agency deals with alleged integrity breaches and related services. In that regard, while compromising the funding of any national organisation is always likely to be something of a last resort, Sport NZ has the independence and objectivity under Option B to be able to consider funding decisions and reports emanating from the SIO and to make informed decisions about such issues without being accused of being both "judge and jury".
- s) In our view, Option B creates the independence the Sector is calling for: the SIO would be separately funded, would have its own governance and leadership, and if established correctly with strong athlete/participant involvement, should be trusted by athletes/participants and by Sector organisations.
- t) Under Option B, the parties involved in an integrity issue would also not need to rely on a sport or recreation organisation to deal with an issue they did not have the independence, skills or objectivity to manage<sup>49</sup> and instead could call on a specialist agency entirely independent of Sport NZ with a singular integrity mandate.
- u) Finally, in relation to independence, the other fundamental challenge with both the current system and Option A is that the Sector strongly perceives that Sport NZ cannot provide the level of independence needed when addressing integrity issues. That view is deeply held and, in a system that requires a high level of trust, is incredibly difficult (if not impossible) to overcome.
- v) For all of the above reasons, the IWG believes Option B achieves actual and perceived independence and provides a system which will foster their support, confidence and trust of participants.

47 Again noting some of the larger sports have developed systems to deal with integrity issues, in conjunction with their players associations, which the parties do consider are fit for purpose.

48 And could be improved further with the introduction of a Director of Integrity sitting within Sport NZ.

49 Noting the yet to be resolved issue regarding mandatory/non-mandatory reporting.

*Provides a **cost-effective solution** by protecting against and resolving integrity issues effectively and efficiently, and with an establishment cost proportionate to the scale of the issues it is seeking to resolve.*

- w) The issue of establishment cost is considered in the independent report of Martin Jenkins, which is addressed in the next section of this report. The IWG accepts that Option A is certainly a less expensive offer in terms of direct and immediate costs.
- x) However in terms of overall cost effectiveness, the IWG believes Option B provides greater value for money for the Sector as a whole. That is because the financial and human costs of a single, mishandled integrity issue can be devastating – and sadly, New Zealand has, in recent years, had multiple examples of this.
- y) If one considers the sport of cycling as just one example<sup>50</sup>, in 2018 Michael Heron QC led a major review into allegations of inappropriate behaviour within Cycling NZ's high-performance programme, allegations which he found to be well-founded. Mr Heron said this reflected a culture in the high-performance programme "of a lack of consequences for poor behaviour, a lack of accountability and sub-optimal leadership". He found that while responsibility for this poor behaviour lay with a small number of individuals, primary responsibility for the culture, lack of accountability and leadership lay with Cycling New Zealand.<sup>51</sup> He also noted some responsibility rested with HPSNZ. Mr Heron's report contained 11 specific recommendations designed to address these issues going forward.
- z) Nevertheless, in September 2021, HPSNZ announced that Mr. Heron QC alongside co-chair Professor Sarah Leberman and panellists Dr Lesley Nicol and Genevieve Macky would be forming a 4 person panel to lead another independent inquiry commissioned by Cycling New Zealand and HPSNZ, following the death of high-performance athlete Olivia Podmore. The purposes of this review are stated to include:
- *To assess the adequacy of the implementation of the recommendations from the 2018 Report by Cycling New Zealand and HPSNZ (noting both areas of strength and opportunities for improvement);*
  - *To identify areas of further improvement that would ensure the wellbeing of athletes, coaches, support staff and others involved in Cycling New Zealand's high performance programme are a top priority within the environment;*
  - *To assess the support offered to athletes at critical points within Cycling New Zealand's high performance programme (by both Cycling New Zealand and HPSNZ), with a particular emphasis on induction, selection and exit transitions;*
- In essence, this is a review partly to determine if the 11 recommendations made by Mr Heron were ever adequately implemented and to review key aspects of athlete wellbeing and support.
- aa) Following the first Heron Report, the sport of cycling was rocked by several controversies, culminating in the tragic death of Ms Podmore. It would be entirely inappropriate to comment on any aspect of that incredibly sad event in this report and we expressly decline to do so.
- bb) However, it is worth highlighting that Mr Heron specifically noted at the outset of his first report that underlying the events at Cycling NZ:
- "...is a high-performance system which requires further reflection as to whether it adequately protects the welfare of athletes and others involved. There is an absence of a functioning and confidential method of escalating and dealing with situations such as these. That absence appears in other areas of high-performance sport in NZ. The system needs review in that respect."***
- cc) The IWG believes Option B provides that system - a system in which athletes and others involved will be able to confidentially escalate issues of inappropriate behaviour to specialists who are skilled and informed in such matters, and who are entirely independent of the national organisation, Sport NZ and HPSNZ.
- dd) We also believe that under Option B, the SIO would be continually working with a sport like Cycling NZ to assist it in ensuring recommendations in a report or investigation with regard to well-being were able to be fully implemented. That is the value of a specialist agency with a singular mandate.<sup>52</sup>
- ee) As noted earlier, the work of a SIO can never be seen as removing responsibility for safety and wellbeing from a sport - legally and morally, that would be the wrong approach. But under Option B the system would provide the participants with an independent means to better understand issues of safety and wellbeing and a process to raise and resolve disputes.
- ff) Equally, Option B will not prevent bad, or even horrific behaviour occurring again in the Sector. Such behaviour will occur. However, this option should help improve the education and awareness not just of sector organisations but also of athletes/participants about what is acceptable behaviour and what is not – and it should provide a safe and trusted mechanism to raise issues in a forum that is skilled and trusted in early facilitation - thus potentially reducing the number of issues that actually arise.

<sup>50</sup> As can be seen in the headlines outlined in section 1 of this report, cycling is but one of many sports who have been through this type of crisis.

<sup>51</sup> Independent Review of Cycling New Zealand's High Performance Programme -Michael Heron QC, 12 October 2018

<sup>52</sup> This is not to in any way suggest that creating an SIO provides the entire solution to issues such as those that arose in Cycling. These issues are often extremely complex, and there are a range of issues and potential outcomes. The point, however, is that as Mr. Heron notes, there is a need for a trusted means to raise and escalate integrity related issues.

- gg) As such, if it is doing its job correctly, the SIO must provide a more cost-effective solution. To continue the situation faced by Cycling New Zealand, this sport has, in recent years, been publicly involved in a considerable number of disputes, various mediations, and multiple reviews, many conducted under an intense media spotlight. The legal costs and the time and energy diverted into dealing with such matters must have been extremely demanding. Many related costs will also have also fallen on Sport NZ and/ or HPSNZ - and these are all resources that could otherwise have been spent on improving our system.
- hh) But of course, the far larger cost is the damage done to the wellbeing of so many people involved in such disputes - these are unquantifiable but patently real.
- ii) Option B provides the best solution in this respect because it provides the best chance of ensuring athletes /participants can operate in a safe environment – and it also provides the best chance for the Sector to not be continually dealing with well-being crisis after well-being crisis.

11.5 Finally, the IWG is very conscious that from an athlete/ participant perspective, whether an integrity issue arises through school sport or recreation, or a club or community-based recreation activity, the impact can be equally detrimental to them and their likely on-going participation in sport and active recreation. In addition, in some cases a young person may experience harm from the same person across both a school and non-school environment, for example by a person who coaches both within school and outside of school. The IWG considers there is a real opportunity for schools to be incorporated into the services offered by Option B, but further work is required to consider this, and significant consultation with the education sector would be required. Nevertheless, we believe this work is of critical importance.

## 12. Feasibility Testing

- 12.1 As noted in section 2 of this Report, the IWG took the view that it was appropriate to have the two models it had developed taken through an independent feasibility assessment. The IWG commissioned the consultancy firm MartinJenkins to undertake this exercise on its behalf. The report from MartinJenkins is attached as **Appendix 8**.
- 12.2 The findings speak for themselves. This work is of particular importance when considering issues of good regulatory practice, the machinery of government and establishment and initial operational costs. The IWG thanks MartinJenkins for its comprehensive work and believes the report provides excellent guidance on the feasibility of each option and how each option might best be advanced.
- 12.3 Obviously, this report reflects the views of MartinJenkins – not the IWG. Having said that, there are three aspects of the report that warrant brief comment.
- 12.4 The report notes that in MartinJenkins' view, both Option A and B are "feasible" albeit Option A would require an independent statutory role, but that the IWG and sector stakeholders prefer Option B because they believe it best meets three critical design objectives:
- Be athlete/participant centred
  - Have actual and perceived independence from Sport NZ
  - Be a simple, accessible system.
- 12.5 The Report goes on to opine that an independent statutory function would strengthen actual independence in Option A, but *"may not achieve perceived independence."*
- 12.6 Based on the feedback the IWG received from a wide cross section of the Sector, we feel this somewhat understates the situation. Put simply, there was nothing in any of the feedback we received that suggests an independent statutory function set up within Sport NZ would satisfy the Sector's strong conviction that a body is needed to oversee integrity issues within Aotearoa/ New Zealand entirely independent of Sport NZ. The IWG believes that if the perception of independence is not firmly established, there is a significant risk any initiative will fail.
- 12.7 The second point relates to MartinJenkins' comment that elements of Option B could be built into Option A to strengthen athlete/participant centred arrangements (albeit at greater cost) and that an effective referrals system may also mitigate the distributed arrangements in Option A. However, even if that is so, Option A is still unlikely to be viewed by the Sector as an athlete/participant centred model and if there is a lack of trust in the system, the IWG believes refinements of this nature are unlikely to make a material difference.
- 12.8 Finally, in relation to costs, the IWG simply notes that while establishment and initial operational costs have been helpfully considered, the cost of "doing nothing" or of creating a system that is not trusted, cannot be forgotten. To that end, the IWG endorses the comment by MartinJenkins that,
- "Ultimately, regulatory arrangements need to be designed to achieve outcomes. Whilst we estimate that Option A is less expensive than Option B, an outcomes focus must also weigh up costs against results and consider whether creating a new entity is more cost effective than the cost of harm from a system that is not trusted and therefore not used."<sup>53</sup>*

## 13. Recommendations

- 13.1 For the reasons outlined in this report, the IWG recommends that the most appropriate institutional arrangements and structures to manage all of the various integrity elements across the Sector and which can accommodate the 22 recommendations from the sport integrity review are:
- a) the introduction of a National Code of Sport Integrity, which will set minimum standards across a range of areas including child safeguarding, member protection, bullying and harassment, and which will also provide dispute resolution options.
  - b) the signing of the Macolin Convention and the adoption of new standards, guidance and advice in relation to competition manipulation.
  - c) the creation of a new stand-alone Integrity Organisation which DFSNZ would fold into, alongside the team within Sport NZ currently focused on integrity.
  - d) This Stand-alone Integrity Organisation should be established as an Independent Crown Entity, have its own governance and management structure, operate independently of Sport NZ and be funded directly with the corresponding accountability requirements of an Independent Crown Entity.
  - e) A Transition Board should be established to oversee the next stage of this project, and to consult with the Sector over the details of the NCIS and any other key issues yet to be determined. That Transition Board will need athlete/participant and survivor expertise and also the skills to work closely with tangata whenua as alternative resolution pathways are developed.
  - f) Work should also be done with the Ministry of Education and School Sport NZ to assess ways in which any new SIO could work with schools to the benefit of rangatahi and tamariki – both in terms of integrity education and also, potentially, utilisation of the NCSI. The IWG believes it this is a critical aspect of the next stage of this project.



21/04/2022

Don Mackinnon (for and on behalf of the Play, Active  
Recreation and Sport Integrity Working Group)

# APPENDIX 1

## Terms of Reference

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## Sport NZ's commitment to Te Tiriti o Waitangi

1. Sport NZ is committed to upholding the mana of Te Tiriti o Waitangi / Treaty of Waitangi and the principles of Partnership, Protection and Participation. We are committed to partnership with tangata whenua and the protection of Māori culture and taonga. We believe a strong bi-cultural foundation is critical to our national identity and wellbeing.

## Background

2. Sport NZ is the kaitiaki (guardian) of the play, active recreation and sport system in Aotearoa, New Zealand. As a Crown agency, it promotes and supports quality experiences in play, active recreation and sport, including elite sport, to improve levels of physical activity and, through this, ensure the greatest impact on wellbeing for all New Zealanders.
3. As part of its role as kaitiaki, Sport NZ must protect the integrity of the play, active recreation and sport system (the system) by ensuring all participants within the system are safe and competing on a level playing field.
4. To this end, in October 2018, the Boards of Sport NZ and High Performance Sport NZ (together the Sport NZ Group) undertook a 'Sport Integrity Review' (Review), which included a six-week public consultation seeking the views of participants, high performance athletes as well as the general public on a range of integrity-related matters.
5. Terminology is important. Whilst the Review was titled a 'Sport Integrity Review' there were several themes emerging from the Review relating to the wider system. Examples include Child Safeguarding, Member Protection and Organisational Culture. Whereas the remaining themes of Anti-Doping, Match-Fixing and Corruption, more accurately sit within a stricter sport frame.
6. The Executive Summary of the Review and the published 22 Recommendations are contained within Appendix 1. The 22 Recommendations were formed through extensive consultation, strong evidence and insights and remain valid and appropriate for New Zealand. It is not the purpose of this Working Group to re-examine the 22 Recommendations. The work to implement the Recommendations is progressing with pace and a full briefing on the status will be provided to the Working Group members as part of their onboarding / induction process.
7. Two Recommendations captured within the subheading of dispute reporting and resolution were:
  - a. Pilot an independent sports complaints management service; and
  - b. Investigate whether a sports mediation service should be established.
8. In response, the Sport NZ Group:
  - a. Established an independent Interim Complaints Mechanism for carded athletes only; and
  - b. Appointed Phillipa Muir and John Rooney of Simpson Grierson to undertake a feasibility study into: the options, risks and benefits associated with centralising a complaints management and/or dispute resolution mechanism (CMDRS), which manages and resolves complaints about "Inappropriate Behaviour" in sport throughout New Zealand. The final Feasibility Report is attached within Appendix 2.
9. Key findings in the Feasibility Report included:
  - Many sport and recreation organisations do not have the resources and capability to manage some of the complaints and problems they face (particularly in relation to Inappropriate Behaviour);
  - There is a perceived lack of independence/capability in relation to some of the CMDRS processes operating in sport currently; and
  - There is overwhelming support (and need) for a national CMDRS (particularly an urgent need for a mediation service) for sport and recreation in NZ.
10. Key recommendations in the Feasibility Report were:
  - Create a sport and recreation mediation service (SRMS) for a two-year trial period;
  - Set up a whistle-blower hotline;
  - Appoint a Sports Ombudsman; and
  - Convene a national working group of NZ sport and recreation members including individuals actively providing leadership and service in relation to integrity, plus athletes and players' associations. This Working Group will consider the creation of a Sport Integrity Unit (and to review other integrity matters outside the scope of the Feasibility Report).

<sup>1</sup> Defined as including: harassment, bullying, abuse, discrimination, inappropriate conduct arising from abuse of power, other unethical conduct, unfair decision making/breaches of natural justice. NB: Match-fixing, doping, betting and corruption were out of scope.

11. The Sport NZ and HPSNZ Board have positively received all the recommendations from the Feasibility report. The whistle blowing hotline recommendation is being built into the SRMS. A tender was released to market to secure an appropriate independent provider on Monday 19 October. This together with these terms of reference for a Working Group relate to three of the Feasibility Report recommendations and the concept of a Sports Ombudsman will be considered within the remit of the Working Group as they explore options around institutional arrangements.
12. This Terms of Reference relates to the recommendation to establish a Working Group to consider the creation of a Sport Integrity Unit. The contemplation of a Sports Ombudsman will be considered by this group. This is because it is deemed premature to introduce the idea of an Ombudsman ahead of standing up a sport and recreation mediation service.

## The Integrity Working Group

13. The purpose of the Integrity Working Group is to:
  - Evaluate a range of options and recommend to the Sport NZ Board and Minister what is considered the most appropriate institutional arrangement(s)/ structure(s) to manage all the various integrity elements across the system and accommodate the 22 recommendations from the Integrity Review once implemented. This will require an assessment of the current institutional arrangements involving Drug Free Sport NZ, the Sports Tribunal, the integrity function within Sport NZ and any independent services funded by Sport NZ such as the Sport and Recreation Mediation Service;
  - Monitor and support the progress being made against the 22 Review recommendations; and
  - Monitor the progress of the soon to be established SRMS over its initial two-year operating period, to help inform any areas for refinement and improvement.

## Process

14. To enable the Working Group to fulfil its purpose in a timely manner, Sport NZ will work with the Working Group to prepare a range of potential institutional arrangement models or options for the Working Group to consider. These options will consider international best practice and the current operating environment in New Zealand.
15. The Working Group will then narrow these options down to a smaller number that will be more robustly assessed, with consideration given to (but not limited to):
  - the constitutional arrangements of Sport NZ, HPSNZ, National Sporting Organisations, the Sports Tribunal and Drug Free Sport NZ
  - the legislative frameworks including the Sport and Recreation Act, the Sports Anti-Doping Act, the Human Rights Act and Court of Arbitration for Sport.

## Assessment

16. As part of this robust assessment process, the Group will assess any potential solution(s) against the following criteria (plus any further criteria the Group considers necessary):
  - **Independence** - does the proposed solution include the requisite level of independence?
  - **Trust worthiness** - will participants trust the proposed solution to protect against and resolve integrity issues when they arise?
  - **Effectiveness** - will the proposed solution protect against and resolve integrity issues when they arise in a suitably effective and efficient manner?
  - **Cost efficiency** (operational) - will the proposed solution protect against and resolve integrity issues when they arise in a cost-efficient manner?
  - **Cost efficiency** (establishment) - will the cost of establishing the proposed solution balance against the scale of the issues it is seeking to mitigate?

## Operation

17. Sport NZ will provide secretariat services, policy advice and wider consultancy services to the Working Group.
18. Sport NZ will work to provide the Working Group with access to all the relevant background information that may be helpful for Working Group members to understand to perform their role optimally. This will include any prior consultation and engagement material relating to integrity that has previously been undertaken.
19. Prior to commissioning any additional research or information, the Working Group Chair will first seek to understand from Sport NZ whether the insights being sought already exist or whether there is indeed a gap in the collective knowledge and insights that requires addressing. Any additional information or consultation required will be requested via and facilitated by Sport New Zealand.
20. It is acknowledged that some of the recommendations the Working Group may reach regarding institutional arrangements may require significant consultation and engagement with parties outside of the Working Group's composition, including international organisations.

## Deliverables

21. The Working Group will deliver a report setting out its recommendation(s) and rationale to the Board of Sport NZ as soon as it deems feasible. Once the Working Group is established, Sport NZ will work with the Working Group Chair to determine what is considered a reasonable, approximate timeframe.

## Decision making and Working Group mandate

22. The Working Group is independent of Sport NZ and will report directly to the Sport NZ Board.
23. Given the constitutional, legislative and budgetary considerations the ultimate decision on implementing any recommendation(s) or actions within the Working Group's report rests with the Sport NZ Board whose role it is to determine the extent to which it will action the recommendations.

## Group Membership

24. The independence of the Group is of paramount importance.
25. The Working Group will include members from within the system as well as members who are actively providing leadership and service in relation to integrity issues in New Zealand. As such, the composition of the Working Group will be skills and expertise based, with representation sought from the following areas:

- Sports Law
- National Sporting Organisation
- National Recreation Organisation
- Regional Sports Trusts
- High Performance Athlete
- Athletes and players' associations
- International Federation experience
- School
- Sport NZ Group
- Government
- Tangata Whenua
- Pasifika
- Participant
- Disability
- Women's voice
- Youth

## Appointment of the Chair

26. The independent Chair of the Working Group will be selected and appointed by Sport NZ.

## Responsibilities of the Chair

27. The responsibilities of the Working Group Chair are to:
  - Set the agenda for each meeting.
  - Make the purpose of each meeting clear to members and explain the agenda at the beginning of each meeting.
  - Clarify and summarise what is happening throughout each meeting.
  - Keep the meeting moving by putting time limits on each agenda items and keeping all meetings to time.
  - Facilitate broad participation from members in discussion by calling on different people.
  - End each meeting with a summary of decisions and actions.
  - Provide the liaison point between the Working Group and Sport NZ.
  - Provide the Board of Sport NZ or the Minister with regular updates.
  - Present the Working Board Report to the Board of Sport NZ and the Minister.

## Individual Responsibilities of the Working Group Members

28. Individual Working Group members have the following responsibilities:
  - Uphold the mana of Te Tiriti o Waitangi / Treaty of Waitangi and the principles of Partnership, Protection and Participation.
  - Understand the purpose of the Working Group.
  - Actively participate in meetings through constructive contribution attendance, discussion, and review of minutes, papers and other Working Group documents.
  - Support open discussion and debate and encourage fellow Working Group members to voice their perspectives.
  - Act independently, remaining open and curious with the best interests of the system in mind at all times.

## Meeting preparation

29. A briefing pack will be sent to members at least 5 business days in advance of a Working Group meeting. This pack will include the following:
  - Agenda for the upcoming meeting.
  - Minutes of previous meeting.
  - Any other documents/information to be considered at the meeting.

## Meeting frequency

30. The frequency of meetings will be discussed at the inaugural Working Group meeting. While it is difficult to determine the term of engagement, this is not anticipated to exceed twelve months.
31. Meetings will be held either virtually or in person (locations to be determined and COVID-19 dependent). For virtual meetings there is the option to attend Sport NZ offices in either Auckland or Wellington for those based in those locations.

## Confidentiality and good faith conduct

32. Working Group members and Sport NZ will conduct their dealings with each other and other officials or stakeholders, who may from time to time contribute to the Working Group, in good faith and in accordance with the State Services Code of Conduct, which should be read and referred to alongside these Terms of Reference.
33. The Chair of the Working Group may only make public comment about the work of the Working Group or their role within it with the prior agreement of Sport NZ. No other Working Group member may make public comment regarding the work of the Working Group or their role within it.
34. If the Chair of the Working Group is asked to provide comment on any issue relating to the Working Group by a third party, the Chair will forward the question or request to Sport NZ.
35. These Terms of Reference may be amended from time to time by Sport NZ in consultation with the Chair of the Working Group.

## Remuneration

36. Integrity Working Group members will be remunerated in accordance with the Cabinet Office's Fees Framework (Circular (19) 1).
37. The Integrity Working Group is classified as "Group 4: All Other Committees and Bodies". The remuneration rate includes preparation time.
38. Each Working Group member will receive a pro-rated daily fee of \$395 (including GST) for attendance at Working Group meetings. The Chair will receive a pro-rated daily fee of \$575 (including GST) for attendance at Working Group meetings. The rate reflects the Chair's additional responsibilities as outlined above.

## Travel expenses

39. In the event of an on-site meeting being necessary then general travel expenses will be reimbursed subject to prior approval being granted by Sport NZ.

## APPENDIX 2

# IWG Member Biographies

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## Don Mackinnon - Chair

Don is a Barrister at City Chambers and has practised in the areas of employment and sports law for approximately 30 years. Don was previously a founding partner of SBM Legal and before then was a partner at Simpson Grierson for 10 years, the last three years as Head of Litigation. He is also the Chair of the Blues and the World Athletics Integrity Vetting Panel and recently retired after 9 years as a director of NZ Cricket. Don has previously served as a director of Sport NZ, a director of High-Performance Sport NZ and was Chair of Netball NZ.

## Joe Hitchcock

Joe is the former Chief Executive of Badminton New Zealand and has worked in regional and national leadership roles in both the NZ and Canadian sport sectors. His professional roles have been complemented throughout his career as a volunteer, coach, and as an advocate of athletes, community sport and recreation. Joe has a track record of leading impact and change in the sports industry, is a current Board Member of University and Tertiary Sport New Zealand and Surfing New Zealand and Director of HT Consulting. Joe holds a Masters in Sport Management from Massey University.

## Josh Tabor

Josh is the CEO of SCOUTS New Zealand. Josh has a PhD in leadership studies, and significant senior management experience, including with New Zealand Police as Director, Organisational Development responsible for delivering New Zealand Police's cultural and workforce initiative and Wellington City Council within the Human Resources department.

## Maria Clarke

Maria is the founder of specialist sports law firm Maria Clarke Lawyers based in Auckland. She is recognised as a leading sports lawyer in New Zealand and internationally with over 30 years' experience. Maria has particular expertise in the areas of sports governance and sports integrity matters including human rights and has advised on significant reforms in these areas for international sports organisations (including World Athletics, International Paralympic Committee, World Sailing and WADA) as well as in New Zealand. Maria also contributes to the sport and recreation sector in her volunteer roles as a member of the International Partnership Against Corruption in Sport governance taskforce; member of the New Zealand Olympic Committee Integrity Committee; coordinator of the NZ International Representatives Network for Sport and member of the NZ Cricket Women in Governance Steering Group.

## David Tse

David is on the Board of Aktive, Auckland's Regional Sports Trust. He is described as a strategic thinker in the field of digital innovation, gleaned from over 30 years in senior management, sales and marketing positions in the technology sector.

Currently the Founder and Principal of VoltageTalent - a Search firm specialising in sales and marketing roles for the IT sector. Prior to VoltageTalent he held senior leadership roles at Jade Software, NEC, Spark, IBM, Oracle, Sun Microsystems and StorageTek.

David is also a Council member of The Superdiversity Institute, an Advisory Board Member of NZ Asian Leaders, a member of the NZ Institute of Directors, the Information Technology Association of NZ (ITANZ) and numerous Chinese Associations and Communities including the NZ Chinese Association and Future Dragonz.

## Ben Sandford

Ben is a Skeleton racer and three-time Olympian representing New Zealand. He has been an athlete representative for World Anti-Doping Agency (WADA) since 2012 and became the chair of the WADA Athlete Committee in 2019. He has been a member of the New Zealand Olympic Committee Athlete Commission since 2008. Ben is a solicitor at Sandford & Partners Lawyers and has a Masters degree in International Sports Law through ISDE in Spain.

## Steph Bond

Steph is the Executive Manager of the Netball New Zealand Players' Association, legal counsel at the New Zealand Rugby Players' Association and a board member of the Auckland Netball Centre. Steph is a solicitor and has previously worked at Russell McVeagh and Maria Clark Lawyers. Steph is a former netball player and played in the ANZ Championship representing the Northern Mystics.

## Maddi McLean

Maddi is the Young People Participation Manager at Golf New Zealand and Board Co-chair for the Shift Foundation. Maddi spent two years on the Sport New Zealand Graduate programme, during which she spent 6 months working at Athletics New Zealand and 6 months at Sport Waikato. Maddi was a national Age Group hockey representative and graduated from the University of Otago with a Bachelor of Physical Education.

## Jackie Barron MNZM

Jackie is an experienced sports administrator having served as Manager of the Black Ferns when they won the 2002 Women's Rugby World Cup and Manager of the Silver Ferns between 2005 –2009. Between 2013 and 2018 she was a Director of Sport NZ. In 2017 she was appointed to the NZ Rugby Respect and Responsibility Advisory Group and in 2019 was elected to New Zealand Football's executive committee.

Jackie has a Master in Sports Management degree and has also held several senior leadership positions at New Zealand high schools. She is currently the principal of St Hilda's Collegiate School in Dunedin, a position she has held since 2015.

## Rebecca Rolls

Rebecca has a law enforcement background spanning over 20 years. This includes 10 years in Police, seven of those spent in the CIB working in a number of areas including the Child Abuse squad. Rebecca then spent 10 years at the Serious Fraud Office, for much of that time she led the investigations team there and in 2017 oversaw a cross-sector anti-corruption work programme. More recently, Rebecca was a General Manager at the Department of Corrections, leading the Integrity and Assurance functions before moving to Sport New Zealand to lead the Diversity and Inclusion area. Rebecca is also retired international athlete, having represented New Zealand in both Cricket and Football. She remains an active member of the New Zealand sports community through coaching, as a Director of New Zealand Cricket, a graduate of the 2020 WSLA programme and a member of the Play, Active Recreation and Sport Integrity Working Group.

Rebecca has a law enforcement background spanning over 20 years. This includes 10 years in Police, seven of those spent in the CIB working in a number of areas including the Child Abuse squad. Rebecca then spent 10 years at the Serious Fraud Office, for much of that time leading its investigations team and in 2017 oversaw a cross-sector anti-corruption work programme. More recently, Rebecca was a General Manager at the Department of Corrections, leading the Integrity and Assurance functions before moving to Sport New Zealand to lead the Diversity and Inclusion area. Rebecca is also a retired international athlete, having represented New Zealand in both Cricket and Football. She remains an active member of the New Zealand sports community through coaching, as a Director of New Zealand Cricket, a graduate of the 2020 WSLA programme and a member of the Play, Active Recreation and Sport Integrity Working Group.

## Julie Morrison

(Sport NZ Group representative)

Julie is the General Manager, Strategy, Policy and Corporate at Sport NZ. Julie previously worked at Te Puni Kōkiri, where she held the position of Deputy Secretary, Support Services, and earlier Group Manager, Finance. She is a chartered accountant with an auditing, finance and management background, predominantly within central government. Julie has played both age-grade and senior representative netball for Hawke's Bay, Manawatu and Wellington.

## Henry Moore

Henry Moore is currently New Zealand's Manager of Legal Innovation at Immediation, a company delivering technology for dispute resolution and legal practice, which is also responsible for delivering the newly established independent Sports and Recreation Complaints and Mediation Service (SRCMS). For the 8 years prior to his current role, Henry was Legal Counsel for the New Zealand Cricket Players' Association (NZCPA). Henry's primary role with the NZCPA was issues management related to members in the Black Caps, White Ferns and domestic team environments, while also providing advice and representation to all professional cricketers in respect of on-field and off-field code of conduct matters, anti-doping and anti-corruption matters, delivering integrity education (including across multiple sporting codes such as hockey, netball and football), undertaking overseas pre-tour security checks, and engaging in collective bargaining with New Zealand Cricket. Henry has Bachelor of Laws and Bachelor of Physical Education degrees from the University of Otago.

## Ralph Elika

Ralph is a Director of Elika Consulting Group has a passion for people and through his foreign affairs work with the Pacific Cooperation Foundation attends global leadership summits. Ralph previously worked as a solicitor for a boutique commercial law firm in Auckland and has extensive sports management experience working with international sporting bodies and grassroots community groups.

Ralph's current trusteeships include the Association of Emerging Leaders Dialogues International, Liston College and Commonwealth Study Conferences, an NZ Charitable Trust. Facilitating a round table discussion with a cross section of Pacific leaders and the United Nations Secretary General António Guterres is a notable example of one of Ralph's many significant distinctions in leadership.

**In addition:**

1. During the period in which the IWG operated, two members of the IWG properly disclosed that they had accepted new employment positions which had the potential to create a conflict of interest for the IWG. Henry Moore was Legal Counsel for the New Zealand Cricket Players Association (NZCPA) when first invited to join the IWG and accepted a position with Immediation New Zealand, the entity providing the SRCMS under contract to Sport NZ. Rebecca Rolls was employed at the Department of Corrections when she initially joined the IWG before accepting a Diversity and Inclusion role with Sport NZ. After careful consideration, the IWG took the view that the IWG did not wish to lose the significant experience and acumen of Henry and Rebecca and that these potential conflicts of interest could be declared and then carefully managed. The IWG is confident that has been the case.
2. Duane Kale and Karen Vercoe were members of the IWG until both were appointed to the board of Sport NZ. Because the Sport NZ board is the ultimate recipient of this Report (along with the Minister of Sport and Recreation) Duane and Karen elected to stand down from the IWG when their appointments were announced. Their short biographies follow:

## **Duane Kale ONZM**

Duane is the Vice President of the International Paralympic Committee and a six-time Paralympic medallist, New Zealand Chef de Mission for the Beijing and London Paralympic Games. Duane has been a member of the International Paralympic Committee since 2013 and has an extensive commercial finance career as a Senior Manager in ANZ Bank.

## **Karen Vercoe MNZM**

Karen is the CEO of Te Arawa Lakes Trust, Chair of Te Pumautanga o Te Arawa, Chair of Data Iwi Leaders Group and Founder of KTV Consulting Ltd. Passionate about Māori business, Māori development, and using data and insights to support community aspirations. A graduate of the University of Auckland Business, Karen has a Master of Management Degree and is a recipient of the Dame Mira Szászy Māori Alumni Award recognising significant success in her career and involvement in the advancement of Māori.

## APPENDIX 3

# Summary Report of Progress Against the Sport Integrity Review Recommendations

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<b>Theme: Dispute reporting and resolution</b>		
<b>Recommendation</b>	<b>Progress</b>	<b>Status</b>
Pilot an independent sports complaints management service	<p>In late 2019 Sport NZ commissioned Simpson Grierson to undertake a feasibility study into a Complaints Management and/or Dispute Resolution Service. The study concluded in August and the Final Report made the following recommendations:</p> <ul style="list-style-type: none"> <li>▪ Establish a Sport and Recreation Mediation Service (SRMS)</li> <li>▪ Establish a whistleblowing service (to be incorporated into the SRMS)</li> <li>▪ Create an Advisory Group</li> <li>▪ Establish an Ombudsman</li> </ul> <p>Sport NZ has taken the following actions:</p> <ul style="list-style-type: none"> <li>▪ launched a RFP to procure a Service provider for the SRMS and whistleblowing service</li> <li>▪ Established an Integrity Working Group</li> <li>▪ The Working Group will discuss the establishment of an Ombudsman as part of its scope.</li> </ul> <p>In April 2019 Sport NZ established an interim complaints mechanism designed to enable people to raise concerns relating to inappropriate or objectionable behaviour within high performance sport. The service allows complainants to contact an independent service that will work with them to help them resolve their concerns.</p> <p>In February 2021 Sport NZ launched the Sport and Recreation Complaints and Mediation Service (SRCMS) which replaced the interim complaints mechanism.</p>	Complete
Investigate whether a sports mediation service should be established	This recommendation was undertaken as part of the feasibility study into a Complaints Management and or Dispute Resolution Service. The SRCMS provides a mediation service.	Complete
Explore whether NZ should establish a domestic appeal body from the Sports Tribunal to provide an alternative to the court of arbitration for sport	While Sport NZ will lead the policy work considering whether a domestic appeals body should be established, the Integrity Working Group are contemplating this recommendation and the outcome will flow from the IWG Report.	In progress
Amend the Sports Anti-Doping Act 2006 to allow for the Sports Tribunal to have more members	Seeking legislative vehicle for Sports Anti-Doping Act 2006. Also awaiting outcome of Integrity Working Group process to bundle all legislative change required into one.	In progress
Encourage NZ Rugby to use the Sports Tribunal to ensure consistency across all sports	Preliminary discussions with NZ Rugby are underway. NZ Rugby has indicated it is open to considering using the Sports Tribunal in future. Next step will be for Sport NZ to assist NZ Rugby to engage with the Players' Association on the issue.	In progress Watching brief

<b>Themes: Partner capability and compliance</b>		
<b>Recommendation</b>	<b>Progress</b>	<b>Status</b>
Strengthening NSO capability in governance and finance through Sport NZ's NSO Capability Project	<p>In 2019 the NSO capability project was structured into two phases including a detailed research project of quantitative and qualitative data sets relating to the role, function and purpose of NSOs.</p> <p>Then followed a stocktake survey to provide a picture of where each NSO was sitting at that time across 6 dimensions: governance, leadership and culture, human resources, finance, technology and stakeholder engagement and communications.</p> <p>The implemented governance and planning recommendations included:</p> <ul style="list-style-type: none"> <li>Adapting the Governance Mark to include questions relating to behaviours and culture and the increase in the amount of assessor time for coaching and training (to confirm functional behaviours and presence of applied Policy as it relates to Integrity)</li> <li>A review of good governance Policies and related documents e.g., templated constitution to ensure Integrity was appropriately covered.</li> <li>The establishment of a Sport NZ supported Sector Chairs Group to lead and support the adoption of sustainable good governance.</li> </ul>	Complete
Investigate options for ensuring all national organisations have a Child Protection Officer and a Child Protection policy in place.	<p>In October 2020, Sport NZ together with Safeguarding Children (registered charity) launched a comprehensive suite of child safeguarding policies and procedures. If an organisation were to customise and embed these policies and procedures within their organisation, it is the belief of Sport NZ and Safeguarding Children that they will be doing the very best they can for tamariki and rangatahi engaging with their sport, recreation or activity. Within these policies and procedures, it is recommended to all organisations that they have a Child Safeguarding Officer within their organisation and that this person is supported, trained and visible and known by all those within the organisation, sport, recreation or activity.</p> <p>This work will be further strengthened by the capability building project.</p>	Complete
Strengthening NSO capability across the themes of Integrity through Sport NZ's Integrity Taskforce Project	<p>Whilst this is not a SIR recommendation, it is a key progression in the Sport Integrity programme. It will comprise the following phased approach:</p> <p>Phase 1- Support partners to achieve baseline capability across all themes of Integrity</p> <p>Phase 2- Support partners to create a tailored plan to increase capability in priority areas</p> <p>Phase 3 – Support partners in a train the trainer approach to help affiliate organisations to uplift across the themes of the integrity framework.</p>	Underway /ongoing
Increase to baseline funding for all funded partners	<p>Not an SIR recommendation.</p> <p>Taskforce Capability Project commencing July 2022 will support all funded partners to meet baseline integrity obligations including Child Safeguarding Officers and policies</p>	Complete
Establish a Sport NZ Webinar Series across the themes of Integrity to raise awareness across the sector	<p>Not an SIR recommendation</p> <p>Delivered:</p> <ul style="list-style-type: none"> <li>Child Safeguarding</li> <li>Competition Manipulation</li> <li>Inclusion a Response to Discrimination</li> </ul> <p>Planned:</p> <ul style="list-style-type: none"> <li>Grooming and chid protection</li> <li>Policies and procedures</li> <li>Various member protection themes</li> </ul>	Complete/ Underway Ongoing

<b>Themes: Education</b>		
<b>Recommendation</b>	<b>Progress</b>	<b>Status</b>
Consider whether Sport NZ's parent and education workstreams could contribute more to child safeguarding	The child safeguarding resources developed and launched in October 2020 provide guidance and education to parents. Collaboration with Balance is Better as a principle/pillar of the programme Bite size learning modules launched Child Safeguarding comprises a theme within the Sport NZ webinar programme which is available to anyone in the sector	Complete
Formerly evaluate existing side-line behaviour programmes with a view to expand the initiatives that work best	Balance is Better work in this area as it is closely related to creating better experiences for tamariki and rangatahi. <ul style="list-style-type: none"> <li>Through the promotion of Active's Good Sports programme and related resources.</li> <li>This is supported by various member and child protection policies and Codes of Conduct.</li> </ul>	Complete
Increase Drug Free Sport New Zealand's education programme to allow DFSNZ to: <ul style="list-style-type: none"> <li>Reach more lower- level athletes</li> <li>Provide greater education on supplements</li> <li>Provide more information about TUE</li> <li>Provide education to the medical profession</li> </ul>	Drug Free Sport NZ has been allocated \$4.3 million over three years from the Sport Recovery Package, which includes \$2.6 million to broaden DFSNZ's reach, engagement and education.	Complete
Explore the demand for a government provided match-fixing education programme and national reporting point for match-fixing intelligence	Sport NZ have developed a Competition Manipulation e-learning module to provide general guidance in areas of match-fixing, tanking and insider information. It is not intended to replace sport specific education and training, but this module will provide users with a good start to understanding competition manipulation and its implications. Facilitator guides with further support have been developed and will be incorporated into further embedding work with the sector. Pilot undertaken. The newly established SRMS houses a whistleblowing hotline to report incidences of match-fixing. Competition Manipulation comprises a theme within the Sport NZ webinar programme which is available to anyone in the sector	Complete

Themes: Resources and tools		
Recommendation	Progress	Status
Investigate the establishment of a central online repository for sport integrity guidance and resources, similar to Australia's Play by the Rules website	<p>In October 2020 Sport NZ as the kaitiaki of the system for play, active recreation and sport launched its integrity portal designed to support organisations to implement best practice to keep children and members safe and ensure involvement in play, active recreation and sport is kept safe, fair and inclusive for all.</p> <p>The main areas of the integrity portal include:</p> <p><b>Community Portal</b></p> <ul style="list-style-type: none"> <li>A community guidance portal to help organisations embed child and member safety into organisational culture. The guidance helps organisations to think about and enhance their approaches to child protection, member protection, diversity and inclusion, match-fixing and gambling, anti-doping and organisational culture.</li> </ul> <p><b>Policies and Procedures</b></p> <ul style="list-style-type: none"> <li>A comprehensive suite of policies and procedures in the areas of Child Safeguarding and Member Protection. Arising from the integrity review was the finding that organisations do not have the capacity or capability to develop and maintain a full suite of policies and procedures. Both suites offer a good starting point to organisations to establish the gaps they may have. They are not intended to replace what an organisation currently has if what they have is up to date and effective.</li> <li>Sport NZ will add to the suite and edit the suite in-line with legislative and best practice changes.</li> </ul> <p><b>Education</b></p> <p>Offering 3 new e-learning modules to the sector:</p> <ul style="list-style-type: none"> <li><b>Child Protection in Play, Active Recreation and Sport</b> A self-guided learning module developed by Safeguarding Children registered charity, based on established e-learning and adapted specifically for anyone who works or volunteers with children in play, active recreation and sport.</li> <li><b>Protecting Against Competition Manipulation</b> Designed with the collaboration of match-fixing subject matter experts this module helps the user to identify how competition manipulation can occur and the threats it brings to individuals and their competition or sport. Whatever the user's level of involvement is in active recreation and sport this module provides a good start to understanding about competition manipulation and its implications.</li> <li><b>Inclusion: A response to discrimination</b> Designed in collaboration with Human Rights Commission this interactive module shows the many ways someone can face discrimination, and the play, active recreation and sport sector isn't exempt from people being treated unfairly on grounds such as race, sex, age or disability. Working on the fundamental belief that everyone should have access to quality experiences and full participation without facing prejudice in their chosen activity and roles in the sector. This module provides the user with an understanding of what an inclusive, supportive and safe environment looks like and the impact of their actions on other people. Providing ways the user can support others who may face discrimination in the sector.</li> <li><b>Child safeguarding bite-sized learning series comprising:</b> <ul style="list-style-type: none"> <li>Building safe and trusted relationships with children</li> <li>Motivations of children</li> <li>Contributing to positive environments</li> <li>Needs and different ages and stages of children</li> <li>Interactions based on levels of development</li> <li>Appropriate actions when interacting with children</li> <li>Embracing diversity</li> <li>Responding to varied behaviours of children.</li> </ul> </li> </ul> <p><b>Complaints</b></p> <p>Currently providing access for complainants to the SRCMS.</p>	Complete

Themes: Resources and tools cont.		
Recommendation	Progress	Status
Update Sport NZ's Safe Sport for Children guidance to reflect legislative amendments since it was initially drafted and any other changes required.	<p>Sport NZ took a more holistic and comprehensive approach to the safeguarding of children. The Safe Sport for Children guidance was amended to reflect legislative amendments and remained active guidance until the launch of the Integrity portal which then provided:</p> <ul style="list-style-type: none"> <li>• Child Safeguarding guidance</li> <li>• A suite of child safeguarding policies and procedures</li> <li>• Child safeguarding e-learning suite</li> <li>• Further resources and guidance will be developed to support this initial rollout.</li> </ul> <p>Child Safeguarding comprises a theme within the Sport NZ webinar programme which is available to anyone in the sector</p>	Complete
Include integrity related questions in the Sport NZ's annual Voice of Participation (VOP) 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.	<p>Sport NZ have added confidence-based questions into the (VOP) survey which will provide some baseline data in addition to the Integrity Review. Further questions will be added to reflect implantation of further recommendations.</p>	Complete
Implement a tool to help protect athletes in on-line environments.	<p>This is not an SIR recommendation but is a significant project that speaks to athlete welfare and wellbeing – Listener is currently being piloted with Women's Cricket World Cup.</p> <ul style="list-style-type: none"> <li>• <b>Areto Ally</b> automatically detects and responds to negative social media comments directed at athletes with messages of support. It is essentially a content moderation system that turns hateful social media content into positive community building.</li> <li>• <b>Areto Listener</b> detects hate speech and bias, using the world's best language analysis models.</li> </ul> <p>These tools support athletes who are targeted on-line, in addition to providing insights into the type of hate speech being used and to whom it is directed. This will be useful to inform future interventions to support athletes.</p>	Complete

Policy		
Recommendation	Progress	Status
Monitor developments with the proposed Police vetting reforms	Sport NZ has been consulted on the policy development for a legislative framework for the Police vetting service. In mid- 2020, Cabinet considered a paper seeking approval for the associated policy decisions. The next stage is for a Bill to be drafted and introduced to Parliament. There is no timetable for introduction that Sport NZ is aware of, however we may seek to have our Minister raise Sport NZ's interest in seeking this legislation be progressed in the near future.	In progress Watching brief
Work with the sector to submit on the modernisation of the Charities Act	DIA's work on the Charities Act was paused in May 2020. DIA intends to advise Ministers on re-commencing the work in late 2020. DIA will advise the sector of the government's intended policy process for considering issues raised in public consultation when this process has been agreed. Sport NZ will seek to share its views and those of the sector with DIA at the appropriate time.	In progress Watching brief
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	The Incorporated Societies Bill was introduced to Parliament in March 2021. Sport NZ has encouraged play, active recreation and sport organisations to make a submission on the Bill given the impact it will have on the sector. Once the Bill is passed into law, Sport NZ will provide support to the sector where necessary to ensure organisations understand their new obligations and are able to meet them.	In progress Watching brief
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	HPSNZ, DFSNZ and Sport NZ have engaged with Australian officials on recent changes to the regulation of supplements in Australia as this had an impact on NZ. Work (to be led by the Ministry of Primary Industries) is yet to commence on the regulation of sports foods and supplements in NZ.	Watching brief
Consider whether NZ should become a signatory to the Convention on the Manipulation of Sports Competitions (the Macolin Convention)	To be consulted on with sector and other interested parties and considered in relation to institutional structures, mechanisms and legislation. Pending outcome of the Integrity Working Group report.	Under Review

Enforcement		
Recommendation	Progress	Status
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	Drug Free Sport NZ have been allocated \$4.3 million over three years from the Sport Recovery Package, some of which will be used to introduce new and improved testing techniques and enhance their doping investigation capabilities. DFSNZ are now piloting a fund that provides financial assistance to NSOs who are required to use DFSNZ's sample collection and testing services when hosting international events.	Complete
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	Initially prioritised for phase 2 delivery. On hold due to IWG work to ensure all legislative change undertaken at the same time.	Yet to commence
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 (ADVRs).	<p>DFSNZ and Sport NZ have made multiple submissions to WADA advocating for greater flexibility in the sanctioning of lower level athletes found guilty of anti-doping rule violations. The new World Anti-Doping Code effective from 1 January 2021 contains increase flexibility in sanctioning recreational athletes, however DFSNZ and Sport NZ believe it should be more flexible. We will track progress of the new Code and its implementation in this area and work with DFSNZ to provide feedback to WADA where necessary.</p> <p>Note: There has been at least 1 case before the Sports Tribunal involving a recreational athlete where the code changes were used to impose a lesser ban of 4 months, where it would have been at least 2 years prior or the change.</p>	Watching brief

## APPENDIX 4

# IWG Consultees in 2021

Organisation	Representative	Role
Drug Free Sport NZ	Tim Castle	Board Chair
	Nick Paterson	Chief Executive
Sport NZ	Raelene Castle ONZM	Chief Executive
	Moana-Lee Raihania	Toihautū
	Roger Wood	Rangatahi Lead
	Geoff Barry	GM Community Activation (then role)
	Sadie Verity	Integrity Manager
High Performance Sport New Zealand	Michael Scott	Acting Chief Executive (then role)
	Neena Ullal	Former Chief Executive
Human Rights Commission	Paula Tesoriero MNZM	Disability Rights Commissioner
	Meng Foon	Race Relations Commissioner
Immediation New Zealand Ltd as the executive function of the Sport and Recreation Complaints and Mediation Service	Michael Heron QC	Chair
	Laura Keily	Chief Executive
	Kelly Hughes	Head of Legal Innovation
NZ Olympic Committee	Kereyn Smith MNZM	Chief Executive and Secretary General (then role)
	Tara Pryor	Chief Operations Officer
NZ Olympic Committee Athletes' Commission	Richie Patterson	Commission member
	Kayla Whitelock MNZM	Commission member
NZ Athletes Federation	Roger Mortimer	General Manager
NZ Rugby Players' Association	Rob Nicol	Chief Executive
Rowing NZ	Geoff Barry	Chief Executive
New Zealand Cricket Players Association	Heath Mills	Chief Executive
NZ Rugby Players' Association	Rob Nicol	Chief Executive
Former Integrity Working Group Member	Duane Kale ONZM	
Sports Tribunal of New Zealand	Sir Bruce Robertson KNZM, VGSM	Chair
NZ Rugby	Fiona Martin	Integrity Manager
	Keith Binnie	General Counsel
NZ Cricket	Chris Smith	General Counsel and Head of Media Rights
Sport Integrity Australia	David Sharpe APM OAM	Chief Executive
	Darren Mullaly	Deputy CEO Strategy and International Engagement
Centre for Sports and Human Rights	David Rutherford	Special Advisor
Office of Children's Commissioner	Judge Andrew Becroft	Children's Commissioner (then role)
Independent Sport NZ/HPSNZ Governance and Structural Review	David Howman CNZM	Chair
Independent Feasibility Study into a Sport and Recreation Complaints and/or Mediation Service	Phillipa Muir	Partner, Simpson Grierson
	John Rooney	Partner, Simpson Grierson
Racing Integrity Board	Neil Grimstone	Manager Integrity Assurance
	Neville Harris	Policy
School Sport NZ	Mike Summerell	Chief Executive
Scouts NZ	Josh Tabor	Chief Executive
Badminton NZ	Joe Hitchcock	Chief Executive (then role)
Sport NZ/HPSNZ Interim Complaints Mechanism and New Zealand Rugby Complaints Service	Steph Dyhrberg	Partner, Dyhrberg Drayton Employment Law
Former High Performance Athletes	Pippa Haywood	Black Sticks 2012-2018
	Brooke Neal	Black Sticks 2013-2020

## APPENDIX 5

# IWG Consultees in 2022

Organisation	Representative	Role
Drug Free Sport NZ	Tim Castle	Board Chair
	Nick Paterson	Chief Executive
High Performance Sport New Zealand	Raelene Castle ONZM	Acting Chief Executive
	Steve Tew	Chief Operating Officer
Human Rights Commission	Paula Tesoriero MNZM	Disability Rights Commissioner
Immediation as the executive function of the Sport and Recreation Complaints and Mediation Service acting through	Michael Heron QC	Chair
	Laura Keily	Chief Executive
	Henry Moore	Manager – Legal Innovation
Netball NZ	Jennie Wyllie	Chief Executive
NZ Olympic Committee	Liz Dawson	Board member
	Kereyn Smith MNZM	Chief Executive and Secretary General (then role)
	Tara Pryor	Chief Operations Officer
NZOC Athletes' Commission	Sarah Cowley-Ross	Chair
	Richie Patterson	Commission member
	Kayla Whitelock MNZM	Commission member
Paralympics NZ	Fiona Allan	Chief Executive and Secretary General
NZ Athletes Federation	Roger Mortimer	General Manager
NZ Rugby Players' Association	Rob Nicol	Chief Executive
Rowing NZ	Geoff Barry	Chief Executive
Sport NZ	Bill Moran	Board Chair
	Raelene Castle	Chief Executive
Sports Tribunal	Sir Bruce Robertson KNZM, VGSM	Chair
NZ Hockey	Anthony Crummy	Chief Executive
NZ Rugby	Fiona Martin	Integrity Manager
	Keith Binnie	General Counsel
NZ Football	Kevin Forde	Competitions and Events Director, NZ Football
NZ Cricket	Chris Smith	General Counsel and Head of Media Rights
Gymnasts – with academic/legal backgrounds	Georgia Cervin	
	Olivia Jöbsis	

## APPENDIX 6

# **Overview of Sport Integrity Institutional Arrangements Pre-September 2019**

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OVERVIEW OF NEW ZEALAND'S  
SPORT INTEGRITY INSTITUTIONAL  
ARRANGEMENTS<sup>2</sup>

	Anti-doping	Match-fixing	Corruption	Member protection	Children's sport
<b>Policy</b>	Set by the World Anti-Doping Code (which New Zealand works to influence).	The Ministry of Justice administers the Crimes Act. Sport NZ led development of the New Zealand Policy on Sports Match-Fixing and Related Corruption.	The Ministry of Justice administers most of the legislation that directly targets corruption-style offences.	Criminal matters fall into a number of statutes. Sport organisations should have their own policies for sub-criminal matters.	The Ministry of Justice and Oranga Tamariki administer relevant legislation. Sport organisations set their own child protection policies
<b>Enforcement (including handling complaints / allegations)</b>	DFSNZ undertakes testing and investigations. Cases are brought to the Sports Tribunal and NZ Rugby Judicial Committee where evidence of anti-doping rule violations is found.	NZ Police enforce the criminal provisions in the Crimes Act. NSOs and international federations have their own sport-specific penalties.	NZ Police and the Serious Fraud Office.	Sport organisations should be able to enforce their own policies for subcriminal matters.	NZ Police for criminal matters. Oranga Tamariki should be contacted where a child is believed to be in danger. Sport organisations should enforce their child protection policies. Police vetting and criminal record checking is available.
<b>Education</b>	DFSNZ, although other organisations, e.g. NSOs, the New Zealand Olympic Commission, and Paralympics New Zealand will work with DFSNZ to make their athletes available.	NSOs and players' associations. Sport NZ provides resources to aid implementation.	Sport NZ provides resources to help sport organisations achieve robust, transparent governance.	Guidance on relevant legislation is available online. Sport organisations.	Sport organisations.

2 Over 92 percent of submitters to the SIR across all sources thought central government should have a substantial role in addressing any gaps in the institutional arrangements for sport integrity. The main options suggested by submitters for further central government involvement were:

- a. provide an avenue for complaints to be raised
- b. check legislative requirements are being met
- c. establish a dedicated sport integrity agency
- d. continue providing advice to sport organisations through active mentoring and/or guidance and templates
- e. continue to provide stewardship through policies and regulation.

## APPENDIX 7

# Overview of Sport Integrity Institutional Arrangements Post September 2019

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OVERVIEW OF PROPOSED SPORT  
INTEGRITY INSTITUTIONAL  
ARRANGEMENTS

	Anti-doping	Match-fixing	Corruption	Member protection	Children's sport
<b>Policy</b>	Set by the World Anti-Doping Code (which New Zealand works to influence).	The Ministry of Justice administers the Crimes Act. Sport NZ led development of the New Zealand Policy on Sports Match-Fixing and Related Corruption.	The Ministry of Justice administers most of the legislation that directly targets corruption-style offences.	Criminal matters fall into a number of statutes. Sport organisations should have their own policies for sub-criminal matters.  Sport NZ can help by providing an online repository.	The Ministry of Justice and Oranga Tamariki administer relevant legislation. Sport organisations set their own child protection policies
<b>Enforcement (including handling complaints / allegations)</b>	DFSNZ undertakes testing and investigations. Cases are brought to the Sports Tribunal and NZ Rugby Judicial Committee where evidence of anti-doping rule violations is found.  Aim to increase DFSNZ capacity for testing and intelligence over time.  Aim to dissolve the NZ Rugby Judicial Committee over time.	NZ Police enforce the criminal provisions in the Crimes Act. NSOs and international federations have their own sport-specific penalties	NZ Police and the Serious Fraud Office.	Sport organisations should be able to enforce their own policies for subcriminal matters.  However, it is recommend piloting a new complaints management service while a sport mediation service is investigated, with a view to have a permanent institution eventually if the pilot and investigation show one is needed.	NZ Police for criminal matters. Oranga Tamariki should be contacted where a child is believed to be in danger. Sport organisations should enforce their child protection policies. Police vetting and criminal record checking is available.  A more efficient Police vetting service is planned.
<b>Reporting</b>	DFSNZ has refreshed its whistleblowing approach. This should be supported with resources for intelligence collection.	Establish a reporting point in the proposed match-fixing educator.	The Police and Crimestoppers, but potentially the match-fixing educator's functions could be broadened to educate on other financial crime in sport.	New, complaints management service pilot.	Oranga Tamariki and the Police for serious incidents. The new complaints management service pilot could also play a role.
<b>Education</b>	As per the current arrangements, although with DFSNZ being resourced to play a greater role.	We propose a new, government-funded match-fixing educator be established.	Sport NZ provides resources to help sport organisations achieve robust, transparent governance. These resources could be collected and presented in a centralised repository. The proposed match-fixing educator could also educate on how to spot other financial crime in sport.	Sport NZ guidance should be collected and presented in a centralised repository.	Sport organisations need to set their expectations.  Sport NZ guidance should be collected and presented in a centralised repository.

## APPENDIX 8

# Option B Feasibility Testing Report (MartinJenkins)

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# FEASIBILITY ANALYSIS OF OPTIONS FOR INTEGRITY ARRANGEMENTS

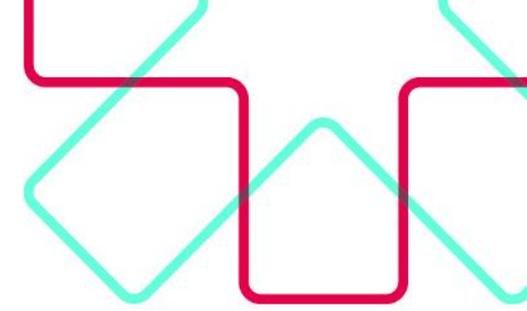
## Final Report

Report for the Play, Active Recreation  
and Sport Integrity Working  
Group

5 April 2022







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# PREFACE

This report has been prepared for the Active Recreation and Sport Integrity Working Group by Joanna Collinge, Michelle Hancock and Ben Guernier from MartinJenkins (Martin, Jenkins & Associates Limited).

MartinJenkins advises clients in the public, private and not-for-profit sectors. Our work in the public sector spans a wide range of central and local government agencies. We provide advice and support to clients in the following areas:

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We have not been required, or sought, to independently verify the accuracy of information provided to us. Accordingly, we express no opinion on the reliability, accuracy, or completeness of the information provided to us and upon which we have relied.

The statements and opinions expressed herein have been made in good faith, and on the basis that all information relied upon is true and accurate in all material respects, and not misleading by reason of omission or otherwise. We reserve the right, but will be under no obligation, to review or amend this Report if any additional information, which was in existence on the date of this Report, was not brought to our attention, or subsequently comes to light.





# SECTION 1: INTRODUCTION

**This section sets out the purpose and scope of this report, and the context, including the drivers for strengthening integrity arrangements and the work of the IWG. It also sets out the structure of this report.**

## Purpose and scope of this report

This report accompanies the *Report of the Play, Active Recreation and Sport Integrity Working Group* (the IWG Report). It provides an independent feasibility analysis of two options the Integrity Working Group (the IWG) has developed in accordance with its terms of reference to recommend the most appropriate institutional arrangement(s)/structure(s) to:

- manage all the various integrity elements across the system, and
- accommodate the 22 recommendations from the Integrity Review once implemented.

Our report provides a high-level feasibility analysis, and is intended to inform consideration of a preferred option. Both options are conceptual in nature, which is appropriate for the early phase of good practice organisational design. It does mean, however, that there are still significant questions regarding the scope and scale of some functions, including the National Code for Sport Integrity (NCSI), thresholds for complaints and access to support services, and stakeholder engagement including with Māori and the education sector. In the absence of this detail, our report is based on a set of assumptions which will need to be tested and refined through policy choices and detailed design of the preferred option.

While this is an independent report, it has been informed by the findings of previous reviews, considerations of the IWG, and consultation with

stakeholders. We have not sought to independently verify or confirm key determinations and assumptions including the problem definition, the nature and scale of integrity issues in the play, active recreation, and sport sector (the sector), and the relevance of the two options to the play sector.

## Context

The drivers for strengthening integrity arrangements across the sector, and the establishment of the IWG, are set out comprehensively in the IWG Report. These detail a series of investigations, reviews and reports over the last decade which demonstrated that arrangements were not fit for purpose, and the recommendation of the *Feasibility Study for a Complaints Management and/or Dispute Resolution Service for Sport New Zealand (NZ)* to convene an independent working group.

The IWG Report also notes that Sport NZ has already taken significant steps to make improvements within current legislation, including an increase to baseline funding, a capability taskforce project, resources and training modules, and the creation of the Sports and Recreation Complaints and Mediation Service (SRCMS).

## The work of the IWG

Throughout 2021, the IWG studied international trends in sport integrity and undertook consultation with the sector, subject matter experts in sport and human rights, and with Māori regarding rights and obligations under Te Tiriti o Waitangi. This culminated in their adoption of a definition of integrity provided in the IWG report.

MartinJenkins then supported the IWG in a process of good practice design which is set out at Appendix 1. This included developing a set of design



objectives and principles, and determining the required functions, against which the current state arrangements and two high-level options for improvement were tested. MartinJenkins accompanied the IWG Chair in meetings to consult sector stakeholder on both options. A summary of key themes from this consultation is provided in the IWG report.

## Recommendations of the IWG

As set out in detail in the IWG Report, the IWG decided that:

- current arrangements do not meet the design objectives and principles
- there were two potential options for further consideration, both predicated on the introduction of a National Code for Sport Integrity (NCSI), and in the area of competition manipulation, the adoption of the Macolin Convention:
  - **Option A** is presented as an evolutionary model built on the existing integrity system distributed between Sport NZ and Drug Free Sport NZ (DFSNZ) but with the ability to provide for an independent statutory function within Sport NZ, and
  - **Option B** is presented as a more significant change through the establishment of a new standalone integrity organisation (SIO) incorporating DFSNZ and the current Sport NZ integrity functions.

Through its own consideration of the two options, and consultation with key stakeholders, the IWG is recommending Option B as the preferred option. The rationale for this recommendation is set out in detail in the IWG report and is primarily because:

- a singular focus on integrity is required, which is trusted by all parts of the sector, and
- this cannot be undertaken by the same agency that funds and promotes national sport and recreation organisations.

The IWG has recognised that structure alone will not achieve the intended objectives, and that the two options are currently designed at a conceptual level. Once the preferred option has been selected, the same design approach can guide further work on detailed design, including systems, processes and culture to ensure the right people and parts of the system are well- connected, and operating with the same mind-set and approach.

## Approach and structure of this report

In assessing the IWG options, we have drawn on frameworks for good regulatory practice, applied to the context of the sector and incorporating a focus on human rights and Te Tiriti o Waitangi rights and obligations. We have also drawn on our knowledge and experience of implementation and change within the machinery of government, and of good change management practice. The structure of our report is as follows:

- **Section Two** provides a summary of our key findings.
- **Section Three** provides an overview of the two options, and the key similarities and differences between them.
- **Section Four** sets out the value of adopting a regulatory approach to the design of integrity arrangements, and analyses both options through the lens of good regulatory practice.
- **Section Five** examines the play, active recreation and sport sector and approaches to regulation in this context.
- **Section Six** analyses both options against the IWG design objectives and principles, machinery of government guidance, and considerations for legislative changes, with illustrative case studies at Appendix 5.
- **Section Seven** considers the change effort required for both options, and implementation and transition considerations
- **Section Eight** provides high level cost estimates for the establishment and operation of both options.



# SECTION 2: KEY INSIGHTS AND FINDINGS

This section sets out our key findings, drawn from our analysis of the options in the context of the sector, good regulatory practice, machinery of government expectations, and our knowledge and experience through other assignments. We have been mindful of the specific context of Aotearoa New Zealand, including rights and obligations under Te Tiriti o Waitangi, and appropriate scale of arrangements for a country of our size.

- Two options for strengthened integrity arrangements are proposed for consideration:** The IWG has determined that current integrity arrangements in the play, active recreation and sport sector are not fit for purpose. It has proposed two options for strengthened integrity arrangements, both predicated on the introduction of a National Code for Sport Integrity (NCSI) and, in the area of competition manipulation, the adoption of the Macolin Convention:
  - Option A is presented as an evolutionary model built on the existing integrity system distributed between Sport NZ and Drug Free Sport NZ (DFSNZ) but with the ability to provide for an independent statutory function within Sport NZ, and
  - Option B is presented as a more significant change through the establishment of a new standalone integrity organisation (SIO) incorporating DFSNZ and the current Sport NZ integrity functions.
- Both options will require some form of legislative arrangement:** Whilst the sector does not generally view itself through a regulatory lens, it is an important discipline to apply to ensure arrangements are fit for purpose in that they can influence behaviours to prevent and protect from harm. From a sport and recreation perspective, regulated parties

are athletes/participants (including coaches officials and recreation group leaders), and sector organisations.

- Regulation is an appropriate response when there is evidence of harm:** Whilst the scale of harm in the sector is not currently quantifiable, there is evidence from a series of reviews and from the complaints received by the SRCMS of the depth of harm for some athletes/participants. This in itself justifies a regulatory approach.
- Arrangements should be designed to meet good regulatory practice:** Both options include the full suite of regulatory interventions, although with different arrangements to deliver them, and both propose an appropriate regulatory form. Detailed design of the preferred option should draw on the government's key principles of good regulatory practice and the proven frameworks of "responsive regulation" and "risk-based regulation" which together provide insights to inform choices on regulatory focus and approach. Consideration should also be given to the regulatory system in which both options would operate, and the need for a collaborative approach where regulatory objectives intersect with other jurisdictions.
- Good regulatory practice** will require the regulator to ensure it is well informed about the rights and interests of Māori under the Te Tiriti principles of partnership, participation and protection. Both options include the provision of alternative disputes resolutions processes, and tailored support for athletes/participants. For Option A, Sport NZ already has Māori representation on the Sport NZ Board, and operates within a Māori outcomes framework. Option B includes two Directors with expertise in tikanga. Tiriti rights and interests will need to be



considered in whichever option is preferred, and Māori should participate in detailed design.

- 6 **The nature of the sector informs regulatory approaches:** Beyond a few exceptions, the sector is made up of relatively small and financially constrained organisations, with a large (and at times solely) volunteer workforce. Even with the best intentions, this often results in a low capacity and capability to manage integrity issues, compounded by the complexity of close community relationships. Sporting organisations are also motivated to win, and some reviews have identified that this has had perverse incentives on behaviours. Many participants in the sector are children and come from diverse backgrounds where extra vigilance is needed. Societal norms are changing - we heard that many sector organisations recognise the need to be more responsive to integrity matters, and would welcome the ability to pass complaints to a trusted external party.
- 7 **A range of factors should be considered in designing a regulatory approach for the sector:**
  - a Decisions must be made in the interest of athlete/participant wellbeing, using approaches that are accessible, culturally responsive and trauma-informed. Decisions should also incorporate an approach to identify relevant human rights, and balance these when they are in conflict.
  - b The system will need to be – and be seen to be – transparent, fair, and impartial.
  - c It is likely there will need to be a phased introduction to enable the sector to prepare.
  - d Providing support to comply will be critical in the early years, including taking a capability building approach that promotes awareness and provides education and guidance with an

emphasis on support. Understanding motivations to comply will be important to achieve this.

- e Arrangements should be designed to limit the compliance burden where possible, potentially including centralised systems and financial and legal assistance.
  - f A risk-based focus on the greatest risk of harm will manage capacity regarding the potential scale of integrity issues, along with thresholds for taking complaints and cases. However, a responsive approach should also be available to issues requiring prompt intervention.
  - g Gathering data and insights will be important to make informed decisions and target efforts, along with analytic skills to understand the scale and nature of issues and to mature the regulatory approach.
  - h Future flexibility can be provided through permissive and principled based legislation, supported by regulations, codes and rules that can be amended without legislative change.
- 8 **Both options are feasible**, as long as Option A includes an independent statutory role. The IWG and sector stakeholders prefer Option B as they believe it best meets three critical design objectives:
    - a Be athlete/participant centred.
    - b Have actual and perceived independence from Sport NZ.
    - c Be a simple, accessible system.

Elements of Options B could be built into Option A to strengthen athlete/participant centred arrangements, albeit at greater cost. Effective referrals systems may also mitigate the distributed arrangements in Option A. An independent statutory function would



strengthen actual independence in Option A, but may not achieve perceived independence.

9 **Machinery of government guidance must be considered in addition to design criteria:** Te Kawa Mataaho Public Service Commission provides guidance that recognises the importance of independence in regulatory arrangements, but also sets a high bar for establishing a new entity, desiring to reduce fragmentation of the public service. Against this guidance:

- a Option A risks a lack of perceived independence, even with a statutorily independent role, but provides greater public service cohesion given its location within Sport NZ as the kaitiaki of the system.
- b Option B provides a greater degree of actual and perceived independence, trading off public service cohesion given it will need to collaborate and coordinate with Sport NZ as the kaitiaki of the system.

10 **The material question is the degree of actual and perceived independence that is required for the new integrity system to be trusted and therefore used,** and whether there is a real and differentiated purpose for – and perception of – a new entity which justifies the greater cost and the reduction in public service cohesion.

11 **Organisational form should be determined through Machinery of Government guidance, considering the design objectives and principles:** This encompasses key considerations of context, governance, accountability, and independence.

- a Organisational forms that are feasible for Option A are a Crown Agent with an independent statutory function for integrity wellbeing, and DFSNZ continuing an Independent Crown entity for anti-doping and competition manipulation.

- b An Independent Crown entity is most appropriate for Option B.

12 **Legislative change is required:** Under both options, changes will be required to the Sports Anti-Doping Act 2006, and the Sport and Recreation NZ Act 2002. Consequential amendments to other legislation may also be required, including the Human Rights Act 1993, the Children’s Commissioner Act 2003, and the Crimes Act 1961. Further policy work and engagement with the impacted entities should be undertaken to understand precise requirements.

13 **Option B could be established by amending and re-naming the Sports Anti-Doping Act 2006:** The powers and functions in the Sports Anti-Doping Act 2006 are largely compatible with those in Option B, and this approach would reduce the drafting effort. Machinery of Government guidance also prefers amending existing legislation rather than creating new Acts. This approach does risk a perception that the new entity has a focus on anti-doping.

14 **Implementation and transition to the new system requires a Transition Unit:**

- a For both options, our advice is that the implementation of the new system will require the establishment of a Transition Unit to plan transition, undertake detailed design, support policy decisions and legislative change, and lead the development and consultation on the NCSI. Although the change effort for Option A is more limited than for Option B, it is not small. A separate Transition Unit would ensure that operational delivery of the current integrity functions is not diverted by transition activities. It also ensures that the design of the new arrangements is independent of Sport NZ, prior to the establishment of a statutory independent role.
- b For Option B the Transition Unit would report to a Transition Board which might include the Chair designate for the new entity. For



Option A, the Transition Unit could report to a sub-committee of the Sport NZ/DFSNZ Boards.

- c Current responsibilities for sector integrity would continue during the transition period, and the Transition Unit should work closely with the existing arrangements, particularly to ensure there is a smooth transition to the new system, and to coordinate and align with any interim extensions to the work of existing arrangements which may be implemented to the extent that current legislation allows.

- 15 **Scale and scope of arrangements:** During detailed design, the Transition Unit will need to be mindful of the scale and scope of arrangements appropriate for a country of our size. This should include consideration of thresholds for complaints and the degree of access to support services.
- 16 **Implementation and transition should include introducing the new system to regulated parties:** This will include consultation with the sector on the NCSI, establishing an accreditation system, and significant engagement with and support for the sector to prepare for compliance.
- 17 **Implementation timeframes, pathways and evaluation:** For both options, it is likely to take between 12 -18 months to build the new integrity arrangements. The implementation pathway will likely be over three phases, firstly to establish the arrangements, secondly to strengthen and expand the regulatory approach, and thirdly to embed new activities and evaluate impact. Across all phases, implementation risks should be mitigated and managed. The operation of the new integrity system should be reviewed two years after it goes live, as the minimum period for the new arrangements to move from 'start up' phase to a more business as usual mode.
- 18 **Costs and cost efficiency:** We estimate current operating costs at approximately \$8m per annum. Option B is more expensive than Option

A, both in establishment and in operating costs. However, our cost estimates are based on a set of assumptions as to scale and scope of arrangements, developed from what we currently know and understand. In detailed design, greater specificity and knowledge of resource constraints will enable choices regarding scale and scope of arrangements, and will likely adjust these cost estimates.

#### For Option A

- i The transition cost estimate is between **s 9(2)(f)(iv)**
- ii Regular operating costs years 3 – 5 (following the transition period) using a low and high range are between **s 9(2)(f)(iv)** per annum

#### For Option B

- i The transition cost estimate is between **s 9(2)(f)(iv)**
- ii Regular operating costs years 3 – 5 (following the transition period) using a low and high range are between **s 9(2)(f)(iv)** per annum. Costs increase each year as the regime matures, awareness and trust builds, and complaints are anticipated to increase.

Ultimately, regulatory arrangements need to be designed to achieve outcomes. Whilst we estimate that Option A is less expensive than Option B, an outcomes focus must also weigh up costs against results, and consider whether creating a new entity is more cost effective than the personal and financial cost of harm from a system that is not trusted and therefore not used.



# SECTION 3: OVERVIEW OF OPTIONS

This section describes the key features of both options, and the similarities and differences between them.

## Overview of Options A and B

### Change under both options

Under both options, key changes from the status quo are that:

- A National Code of Sports Integrity (NCSI) will be introduced that will set minimum standards across the five dimensions of integrity<sup>1</sup>
- In the area of competition manipulation, New Zealand will become a signatory to the Macolin Convention
- Formal delegations for sport would be established within the NZ Human Rights Commission and the Office of the Children's Commissioner.

Both models have a similar range of functions to prevent and address breaches of the NCSI minimum standards, with the key functional differences being the scale of the athlete/participant support regarding integrity matters, and the reach of the education and capability building function.

Compared to current arrangements, both options would require a significant lift in capacity and capability to undertake the new functions, and both would require new funding.

### Key points of difference

While both models involve a change to the status quo, the key point of difference is between the structural arrangement of the functions and degree of change from current arrangements.

- **Option A** involves the creation of an Integrity Unit within Sport NZ, with new arrangements to increase the independence of the Unit, potentially incorporating an independent statutory role. It would largely engage with the sector through its Partners. DFSNZ would remain a separate entity, expanded to encompass competition manipulation. Option A may be less expensive than Option B.
- **Option B** involves the creation of a new independent Sports Integrity Organisation (SIO) which would absorb DFSNZ (expanded to encompass competition manipulation) and the Sport NZ integrity functions. It would have direct engagement with all levels of the sector. Sport NZ would remain as the kaitiaki of the system and would retain the government sport and recreation policy function. Option B is likely to be more expensive than Option A.

Table 1 below sets out the key differences and similarities between the options.

We analyse each option against the IWG design objectives and principles at Section 6 below.

<sup>1</sup> Anti-doping, match fixing, corruption, member protection and child safeguarding.



**Table 1: Key differences and similarities across options**

	Option A	Option B
<b>Mandate</b>	Introduction of the NCSI, and adoption of the Macolin Convention. The Unit or SIO would be responsible for monitoring compliance.	
<b>Organisational Form</b>	Unit (potentially with statutorily independent role) within Sport NZ that reports to an independent Advisory Committee, and DFSNZ as an independent entity.	New independent Sports Integrity Organisation (SIO).
<b>Funding</b>	Unit could have own separate funding appropriation within Vote Sport and Recreation or within the appropriation for Sport NZ.	SIO would have dedicated appropriation within Vote Sport and Recreation.
<b>Education and capability building</b>	Undertaken by the Unit and DFSNZ. Direct sector engagement by the Unit would largely be with its Partners.	Undertaken by the SIO, with direct reach to all parts of the sector including clubs
<b>Complaints, triaging, facilitation, mediation, and early investigation</b>	This would be contracted to SRCMS for Integrity matters and undertaken by DFSNZ for doping and competition manipulation.	The SIO would undertake triaging. Disputes resolution would either be contracted to an external services provider, or undertaken by the SIO
<b>Investigation, intelligence, and monitoring</b>	Undertaken by the Unit and DFSNZ.	Undertaken by the SIO, retaining the specialist investigation function for anti-doping.
<b>Enforcement</b>	The approach to enforcement will be developed in detailed design. Options for consideration across both options include requiring compliance with the NCSI in Sport NZ relationship agreements as a requisite to obtain funding; doing the same but allocating a percentage of funding to the SIO/Unit to utilise for compliance; or making compliance with the NCSI compulsory through legislation. Adopting the NCSI could also be a lever for organisations seeking recognition from Sport NZ. Under both options, organisations could seek accreditation to operate their own integrity system, compliant with the standards under the NCSI.	
<b>Drug Free Sport NZ</b>	Expanded to encompass competition manipulation.	
	Remains a separate entity.	Absorbed into new SIO.
<b>Athlete/participant function</b>	Independent Athlete Voice Mechanism available for TAP high performance athletes Funding and a variety of channels available for non-professional athletes and participants.	Athlete/Participant Support Unit established to advance interests of athletes/participants through providing victim support, access to legal support, working with agencies, and engaging in policy development. A threshold for access may apply.
<b>Government Policy</b>	Sport NZ retains its sport and recreation policy function. This is separate to the Unit but with a close working relationship.	Sport NZ retains its sport and recreation policy function. This is separate to the SIO but with a close working relationship, and will ensure compliance with the WADA Code.



<b>Operational Policy</b>	The Unit will have this function with the exception of doping and competition manipulation which would be the responsibility of DFSNZ.	The SIO will set standards for participants in the system to meet national and international expectations and obligations.
<b>Disciplinary Panel</b>	Introduced as new independent inquisitorial and informal panel to hear cases, supported by a Registrar. In Option A this is available as an additional opt-in mechanism for organisations requiring an end-to-end service.	
<b>Tribunal</b>	Remains as appellant body, with a potential increase in membership and broadened set of competencies.	



# SECTION 4: GOOD REGULATORY PRACTICE

This section explores the value of adopting a regulatory approach for integrity arrangements, and of analysing both options through the lens of good regulatory practice.

It looks at the importance and relevance of a regulatory approach from a sport integrity perspective, then explains aspects of regulatory practice, regulatory form and finally consideration of Te Tiriti o Waitangi principles within regulatory arrangements.

Some examples referred to in this section are provided as case studies in Appendix 5.

## Why is regulation relevant?

We have chosen to undertake this feasibility analysis through the lens of regulatory good practice. Both options are in effect regulatory systems in that they require people and organisations to meet integrity standards set out in a code. Both options provide for a suite of interventions to support compliance, and to determine and potentially penalise sub-criminal breaches of the standards. Figure 1 below sets out the New Zealand Government definition of regulatory systems and participants.

Figure 1: Regulatory systems, parties and agencies <sup>2</sup>

- A regulatory system is a set of formal and informal rules, norms and sanctions, given effect through the actions and practices of designated actors, that work together to shape people's behaviour or interactions in pursuit of a broad goal or outcome.
- A regulated party is a person or organisation that is subject to behavioural expectations, obligations and/or sanctions within a regulatory system, and
- A regulatory agency is any agency (other than courts, tribunals and other independent appeal bodies) that has any of the following responsibilities for the whole or part of a regulatory system: monitoring; evaluation; performance reporting; policy advice; policy and operational design; legislative design; implementation; administration; information provision; standard-setting; licensing and approvals; or compliance and enforcement.

## Why is regulation important?

Regulation provides essential safeguards to ensure people and communities are protected from harm, whilst also balancing the legitimate interests and needs of organisations so that the requirements on them are proportionate, and do not have unintended consequences.

### Discipline of a regulatory lens

Whilst the sector does not generally view itself through a regulatory lens, it is an important discipline to apply when considering integrity arrangements to ensure that they are fit for purpose for influencing behaviours to prevent and protect from harm. <sup>3</sup>

<sup>2</sup> Government Expectations for Good Regulatory Practice, 2017, available at <https://www.treasury.govt.nz/sites/default/files/2015-09/good-reg-practice.pdf>

<sup>3</sup> Government Expectations for Good Regulatory Practice, 2017, available at <https://www.treasury.govt.nz/sites/default/files/2015-09/good-reg-practice.pdf>



## Figure 2: Key principles of good regulatory practice

The government believes that durable outcomes of real value to New Zealanders are more likely when a regulatory system:

- has clear objectives
- seeks to achieve those objectives in a **least cost way**, and with the least adverse impact on market competition, property rights, and individual autonomy and responsibility
- is **flexible** enough to allow regulators to adapt their regulatory approach to the attitudes and needs of different regulated parties, and to allow those parties to adopt efficient or innovative approaches to meeting their regulatory obligations
- has processes that produce **predictable and consistent** outcomes for regulated parties across time and place
- is **proportionate, fair and equitable** in the way it treats regulated parties
- is **consistent with relevant international standards** and practices to maximise the benefits from trade and from cross border flows of people, capital and ideas (except when this would compromise important domestic objectives and values)
- is well-aligned with existing requirements in related or supporting regulatory systems through **minimising unintended gaps or overlaps** and inconsistent or duplicative requirements
- conforms to established legal and constitutional principles and supports compliance with New Zealand's international and **Treaty of Waitangi obligations**
- sets out legal obligations and regulator expectations and practices in ways that are **easy to find, easy to navigate, and clear and easy to understand**, and
- has **scope to evolve** in response to changing circumstances or new information on the regulatory system's performance.

### Potential for failure

Poorly designed regulatory models can result in regulatory failure – serious incidents of harm arising from a series of regulatory deficiencies as opposed to one-off errors of judgement (which will always occur), or a single regulatory deficiency. Recent examples of regulatory failure in New Zealand include the Pike River Coal Mine tragedy, and systemic weaknesses in Waka Kotahi's regulatory function.

## What is good regulatory practice?

From a play, active recreation and sport integrity perspective, regulated parties, or duty holders, can be categorised as:

- **Athletes and participants (including coaches, officials, recreation group leaders) who will be subject to individual behavioural expectations**
- **Sector organisations who will be subject to the expectation that integrity standards are maintained and upheld within their organisations and areas of responsibility**

The government has issued guidance for good regulatory practice, which specifies that a new regulatory system or system component should not be introduced unless agencies are satisfied it will deliver net benefits for New Zealanders. The guidance also sets out a series of key principles of good regulatory practice which should underpin any regulatory design.

Choices on regulatory focus, objectives, design and execution will have a significant bearing on the ability of any regulatory model to meet government expectations.



## How can we think about regulatory models?

In Aotearoa New Zealand, regulatory models typically provide for a combination of 'responsive regulation' and 'risk based regulation'. These are proven frameworks which provide useful insights for assessing arrangements for the sector to implement the standards under the NCSI.

### Responsive regulation

Responsive regulation is widely used as a compliance strategy in New Zealand.

'Responsive regulation' is underpinned by an understanding that regulators need a range of tools and approaches to seek compliance. These tools should be applied based on the attitude and needs of the regulated party. For example, where parties are willing yet needing guidance an approach of education might be appropriate, but where there are attitudes of wilful non-compliance, stronger more decisive action is required such as sanction or even prosecution.<sup>4</sup>

### Risk-based regulation

Risk-based regulation takes a more targeted approach to identifying and assessing the risk of harm, and on channelling resources to address, modify or reduce the potential harm. As such, these approaches can be understood to focus on controlling risks rather than securing compliance with rules.

These frameworks are set out in more detail at Appendix 2.

<sup>4</sup> Productivity Commission Report, p 56.

**From a play, active recreation and sport integrity perspective, responsive regulation** would see a broad and integrated approach to building awareness and engagement with the regulated community, using a range of tools to increase compliance – combining a focus on education and guidance with targeted deterrence and enforcement activities where warranted. **Risk-based regulation** would suggest a highly prioritised focus on intervening in those sports or organisations where there is greatest risk of exploitation or harm, or where the impact of that exploitation is likely to be the greatest.

Both options could provide for responsive and risk-based regulation.

**Option A** could do this by drawing on its broad engagement and knowledge of the sector. **Option B** could do this by utilising its engagement and monitoring functions and independence to develop its understanding of the community and risk of harm.

It should be noted however that the choices are not necessarily about one form or another – and that the final preferred model has the potential to combine aspects of both.

## The regulator, but not alone

A regulator should operate across a cycle of activities and within a wider system, working in stewardship and collaboration with others. Regulation of the play, active recreation and sport sector is no exception to this, and intersects with other jurisdictions as set out in Table 2 below.

Both options would need to take a whole-of-system view with clear allocation of accountabilities, roles and responsibilities across the system, and a proactive, collaborative approach in the care of the regulatory system.



There are also a range of existing frameworks in the sector that will intersect with the new regime. This includes regulated organisations that have constitutions, school sport frameworks, and negotiated agreements with athlete representation bodies.

Whichever option is selected, the regulator will need to establish relationships with these bodies and consider how they will work together.

### Both options could operate within the regulatory system

While both options could feasibly fit within the regulatory system, they would do this in different ways.

Option A provides the arrangements to ensure a whole-of-system approach because the Integrity Unit will sit within the kaitiaki of the system, Sport NZ. However, this same placement may reduce the clarity and accountability of the Unit's role from that of Sport NZ's wider purpose, noting this can be mitigated by establishing the Unit with a statutorily independent role.

Conversely, Option B provides a clear single point of accountability for integrity issues as a separate agency. Alignment with the whole-of-system approach would however depend on a close working relationship with Sport NZ.

**Table 2: Relationship with parties in the regulatory system**

Related party	Nature of relationship
<b>Sector</b>	
Sport NZ and High Performance Sport NZ (HPSNZ) (Option B)	Sport NZ is the kaitiaki of the play, active recreation, and sport system in Aotearoa New Zealand. The system should recognise and leverage this. Sport NZ also retains the government policy function for sport and recreation. HPNZ has a role in leading aspects of the elite sport system with athlete wellbeing responsibilities.
DFSNZ (Option A)	DFSNZ has related but distinct powers, functions and role.

Sports Tribunal	The Tribunal will need to remain independent in any future arrangements as the appellate body. Its legislation may need to be updated to ensure it is equipped to play this role.
Racing Integrity Board	Coordination may be required regarding matters relating to match fixing in particular.
International codes	A suite of international regimes and bodies have an intersection and impose obligations for the domestic sector. The regulatory system should ensure compliance with these standards.
<b>Non-sector</b>	
NZ Police	The regulator should only address sub-criminal matters and non-financial criminal matters should be referred to the Police.
Serious Fraud Office (SFO)	Matters that involve serious or complex financial crime should be referred to the SFO.
Ministry of Education and School Sport NZ	The education sector includes sport and recreation activities, and there will need to be engagement on integrity arrangements. There is potential for overlap and close working relationships to leverage benefits.
Ministry of Justice and Oranga Tamariki	Both Departments administer legislation relevant to children in sport and recreation, including the Children's Act 2014. The Ministry of Justice is Crown monitor for both the Human Rights Commission and the Office of the Children's Commissioner.
Employment – Tribunal and Court	The system should not interfere with the exclusive jurisdiction of the Employment Tribunal and Court and may need to coordinate when integrity matters impact on employment matters.
WorkSafe NZ	The overlap between the PCBU responsibilities and certain integrity matters, for example bullying, may justify a working relationship.
Office of the Children's Commission (OCC)	Given the high participation rates of children in the sector, and the fundamental importance of children's rights in integrity matters, a close relationship with the OCC is required.
NZ Human Rights Commission (NZHRC)	The integrity system should enable a culture founded on fundamental human rights. Drawing on the expertise of the Human Rights Commission will support this culture. The overlap between the HRC complaints and policy functions and integrity matters also requires a close working relationship with the NZHRC.



## Regulatory form

Alongside the regulatory approach it is important to consider the form of regulation that is best suited to the context.

The following principal options for regulatory form, including the use of codes, is adapted from the Australian Government's Best Practice Regulation Handbook.<sup>5</sup>

- **Self-regulation** where the sector is responsible for both formulating rules, standards or codes, and enforcement.
- **Quasi-regulation** where the government influences the sector to comply through pressure to act in a certain way, but rules are not legally binding. This might include making compliance a precondition of involvement in government contracts and benefits.
- **Co-regulation** where the industry develops and administers its own arrangements, but government provides legislative backing to enable the arrangement to be enforced. This might occur where a sector code is supported by government standards or where the government enforces undertakings to comply with the code.
- **Explicit government regulation** is where the government specifies how regulated entities should act, and undertakes a range of functions across education, engagement, monitoring and investigation, and enforcement for compliance (through fines and other penalties).

These forms are not mutually exclusive, and a regulatory system can include elements of each. Factors determining the appropriate form of regulation include the severity of the problem, the extent of risk, the nature of the

industry or sector, the need for flexibility or certainty of regulatory arrangements, and the availability of resources.

**From a play, active recreation and sport integrity perspective, both options include aspects of quasi regulation and co-regulation.** For example, the use of funding agreements to influence compliance with the NCSI can be considered as quasi-regulation, whilst the use of legislated requirements for compliance and enforcement are a form of co-regulation.

**Option B** may be considered as having a greater involvement in the sector because of its direct engagement at all levels, similar to the approach taken by DFSNZ now. Aside from that, both options achieve these regulatory forms to similar extent. This form of regulation would appear to be appropriate as:

- there is public interest in having legislative backing of integrity standards
- the issues are not appropriately addressed through pure self-regulation due to competing incentives
- the flexible and less formal approach is suited to the diverse, varied, and under-resourced sector
- sector bodies with their own integrity systems can ensure compliance themselves, albeit with appropriate oversight.

<sup>5</sup> Australian Government, Best Practice Regulation Handbook, 2007, retrieved from [https://regulationbodyofknowledge.org/wp-content/uploads/2013/03/AustralianGovernment\\_Best\\_Practice\\_Regulation.pdf](https://regulationbodyofknowledge.org/wp-content/uploads/2013/03/AustralianGovernment_Best_Practice_Regulation.pdf). This is also outlined in Department of Internal Affairs, Achieving

compliance: A guide for compliance in New Zealand. Wellington: New Zealand. 2011: retrieved from: [https://reg.govt.nz/wp-content/uploads/2019/04/AchievingComplianceGuide\\_17July2011.pdf](https://reg.govt.nz/wp-content/uploads/2019/04/AchievingComplianceGuide_17July2011.pdf)



**From a play, active recreation and sport integrity perspective, both options have the potential to incorporate a te ao Māori approach.**

- The extent to which the options achieve this approach is highly dependent on detailed design, including the meaningful participation of Māori in that process.
- Both options include the provision of alternative disputes resolution processes
- Both options include support for athletes/participants, albeit to different degrees
- Sport NZ has an established bi-cultural approach, including Māori representation in governance, and this could be applied to the Integrity Advisory Committee. Option B includes two Directors with expertise in tikanga which supports a te ao Māori approach.

## Regulatory practice and Te Tiriti o Waitangi/Treaty of Waitangi

The IWG design principles require the integrity arrangements to provide for a te ao Māori approach, upholding the principles of Te Tiriti o Waitangi.

Further, good regulatory practice will require the regulator to take steps to ensure it is and remains well informed about the range of interests of Māori, including compliance with rights and interests under the three Te Tiriti o Waitangi principles of partnership, participation and protection.

Cabinet Office has provided a useful guidance that provides a framework for policy makers to consider Te Tiriti o Waitangi in policy development and implementation.<sup>6</sup>

<sup>6</sup> Cabinet Office, Supporting Cabinet Decision-making, CO (19) 5: Te Tiriti o Waitangi/Treaty of Waitangi guidance.

The Treaty rights and interest analysis set out in Table 3 below is based on desk-top analysis, and good regulatory practice would require the regulator to inform itself of potential Māori interests prior to formulating appropriate regulatory responses. It might do this through engagement, consultation and partnership and by ensuring it has cultural capability and competence.

**Table 3: Treaty rights and interests analysis**

Treaty consideration	Key questions for the regulator	Potential interests
Article One: The right to govern	<p>Will the new duty affect different Māori groups differently?</p> <p>Are there any unintended impacts?</p> <p>What are the potential range of iwi/Māori interests?</p>	The options are not expected to impact Māori duty holders differently or disproportionately. However, Māori participation rates are relevant as young Māori spend the most time in organised and informal participation compared with other groups of young adults. <sup>7</sup>
Article Two: Exercising rangatiratanga	Is there a specific role that can be led or played by Māori?	Key interests may arise in design and implementation, as well as in te ao Māori/tikanga informed dispute resolution, support and advocacy processes
Article Three: Rights as citizens	<p>Will the introduction of the duty contribute toward more equitable outcomes for Māori?</p> <p>What are the relevant perspectives that tikanga and te ao Māori values may bring?</p>	As Māori have relatively higher participation rates, this may contribute to improved outcomes for Māori with appropriate investment and well informed and supported compliance activity

<sup>7</sup> Aktive NZ, The New Zealand Participant Survey, 2018.



# SECTION 5: REGULATING IN THE SECTOR

In good regulatory practice, context is vital. The nature of the matters being regulated, and the profile and level of maturity of the regulated parties needs to inform regulatory strategy and design.

This section looks at the Sector, what it means for the regulatory approach, and the proposed options.

## The Play, Active Recreation and Sport Sector

### Sector profile

#### Predominantly small organisations

Beyond a few notable exceptions, the Sector is made up of relatively small organisations, with few if any employees and a significant volunteer workforce.

Most organisations operate under financial constraints, which have been compounded by the COVID-19 pandemic. They are currently focused on keeping people active and ensuring their organisations are sustainable.

#### Low capacity and capability for managing integrity issues

With this profile, it is unsurprising that many organisations have relatively low organisational capacity and capability to introduce new and fit for purpose policies and processes to prevent and manage integrity matters.

#### Community of relationships

Sector organisations are also communities, with relationships that go beyond the work they do together. This can make it harder for individuals to feel safe to raise concerns.

#### Independent legal entities

Sector organisations are independent legal entities. Unless it is a matter of law, they are not compelled to comply with integrity standards outside of voluntary arrangements.

Feedback from national organisations has been that they and their clubs recognise the issues that managing integrity can present and would welcome the opportunity to hand their complaints to another entity to manage as long as they trusted the system.

### Nature of integrity issues

#### Integrity issues are becoming more prominent

Societal norms are changing, and behaviour once considered acceptable is now being challenged. Tribunals are no longer judging cases purely on precedent, but also on societal expectations of conduct.



## **Integrity issues are complex**

The complexity of integrity issues adds to the challenge. This is less the case for more technical matters such as doping. However, matters regarding safety and wellbeing challenge even mature and well-resourced organisations as they are societal, not particular to their organisation and their expertise. Some matters will require a judgement on when a referral to another jurisdiction is required, including potentially criminal cases.

## **A focus on youth and on diverse backgrounds needs to be accommodated**

A dedicated focus on the demographics of sector participants is required. Many sector participants are children, whose safety requires extra vigilance. Participants also come from diverse cultures and backgrounds so approaches to prevent and address integrity matters need to be responsive to this. Competence is needed in areas of expertise which would not naturally be held in most sector organisations, including child safeguarding, trauma-informed approaches, cultural competency, and alternative forms of dispute resolution.

## **What is known about integrity issues**

As noted in the IWG Report, the scale of integrity issues has not been quantified. However, we know from reviews over the last decade, and complaints received by the SRCMS over the last year, that the nature of issues includes serious cases of bullying, sexual harassment and abuse, as well as less extreme matters where wellbeing has been compromised.

## **Sport specific factors**

Sports organisations in particular, are generally seen as capable to handle “on field” behaviours, but even these can sometimes blur into integrity matters, so judgement is required on the appropriate pathway for complaints.

## **Motivation to win affects behaviours**

Sporting organisations are motivated to win, and some reviews have concluded that the drive to do this can have perverse incentives on behaviours. This has been seen as a particular matter for high performance sport, where some athletes have reported feeling unable to raise matters fearing adverse impact on their career through selection decisions, or because of potential removal of funding for their sport.

## **What does this mean for the regulatory approach for sport integrity?**

### **Current anti-doping approach remains**

It can be anticipated that DFSNZ’s current regulatory approach to anti-doping will remain in place and can be applied to competition manipulation for sub-criminal matters.

### **A range of factors have influence for the approach to integrity wellbeing**

The factors below are key considerations to inform a regulatory strategy that is appropriate for the sector, and it is important that options for arrangements can accommodate them.

The approach may require different implementation pathways for high performance sport compared with other parts of the sector.



## **Athlete/participant centred, founded on human rights and cultural responsiveness**

Decisions must be made in the interest of athlete/participant wellbeing, and use approaches that are accessible, culturally responsive and trauma-informed. This approach requires a good understanding of the regulated community in terms of needs, attitudes and behaviours. These would in turn inform ways and means for communication with athletes/participants and others, and including mechanisms for meaningful participation in the system, respectful processes, and athlete/participant centred support wherever action was being taken.

The approach would also require identification of relevant human rights and rights holders, and a process to balance the rights when they are in conflict.

Appendix 3 provides guidance from the NZ Human Rights Commission to apply this approach, drawn from international models.

## **Transparent, fair and impartial**

### **Trust in the system**

Sector feedback consistently states that integrity breaches will only be reported if the system is trusted. This means that the system must be – and be seen to be – transparent, fair, and impartial.

The regulator will need to be open about what it does and how it does it so that people in the community know what to expect from the system - both in the way that it interacts, and in the approaches it takes to decision-making.

## **Phased introduction and prioritised coverage**

### **Preparation**

For both options there will need to be a period of preparation, including key policy decisions, and development of the NCSI and new legislation. In

addition, arrangements could be put in place for a phased introduction of the standards where obligations do not apply for a period after legislation is passed. Alternatively, enforcement or penalties may be phased through an amnesty period.

### **Prioritisation**

The introduction of integrity standards can also be by prioritised coverage, where organisations that are more able are expected to comply first. For example, in this sector, national organisations may be ready earlier than clubs.

## **Support to comply will be critical**

A regulator should be able to undertake the full spectrum of regulatory interventions, which ranges from working alongside regulated parties to support them to comply, through to enforcing the standard.

### **Capability building**

In the early years under new integrity standards, it will be critical that the regulator takes a capability building approach for most sector organisations, primarily focused on soft regulatory tools, promoting awareness and providing education and guidance, with an emphasis on support.

Both options will, to different degrees, be relying on National Organisations (Nos) to regulate their regional organisations and clubs. In Option A this will effectively be a form of distributed regulation where the Unit 'contracts out' regulation to NOs, making strong support even more critical.

### **Partnering with the duty holders**

It will be important to avoid the regulator "owning" the solution, but instead acting as an advisor to help the sector put in place compliant solutions.

This requires a culture of partnering with the sector to help them identify and address areas of concern.



Understanding motivations and incentives to comply will be important to achieve this. The varied motivations and incentives, and related interventions to consider are outlined in Appendix 4.

### **Limiting the compliance burden**

It will be important to design compliance arrangements that are responsive to the financial and capacity constraints of most organisations in the sector.

Financial and legal assistance might be made available to support constitutional changes (supported by a phased introduction), along with the provision of sample policies. Compliance arrangements should not be burdensome and should harness economies of scale through centralised systems where possible, for example vetting coaches who work with children. Technology should also be utilised to simplify and streamline systems and processes.

The accreditation system for organisations wishing to run their own integrity arrangements should balance probity with a proportionate degree of compliance effort.

### **Risk based focus**

Whilst the scale of integrity matters in the sector is not quantified, this does not affect decisions on whether to strengthen integrity standards as there is evidence of depth of harm, and this is a sufficient reason for action.

### **Focus on greatest risk of harm**

To manage capacity regarding potential scale, considerations could include taking a specific focus on the greatest risk of harm to protect more vulnerable athletes/participants. This may be challenging to identify in the early years whilst the evidence-based is low, but themes may already be emerging through the SRCMS and the various reviews. Athletes in high performance sport, and children participating in the sector, may be early areas of attention.

### **Complaints management**

Thresholds for taking complaints are also an important tool for a risk-based approach, and these will need to be developed early, potentially using a weighted system which can be matured as understanding grows.

### **Targeting the response**

A risk based approach does not preclude a responsive approach to issues requiring prompt intervention as decisions about the regulatory intervention or enforcement action should be specific and proportionate to the context. In some circumstances the regulator may choose to use stronger enforcement tools where there is a pattern of failure beyond a single instance; or alternatively in a situation where a single instance has presented significant harm. In different circumstances, mitigating factors may suggest a lesser response.

### **Building data and insights**

#### **Making informed decisions**

Decisions should be made on the best available information, to support the exercise of good judgement, the targeting of efforts, and to increase understanding about the nature of risk or harm.

It will be important to build an understanding of the scale and nature of issues in the sector to mature the regulatory approach, supporting informed risk-based decision making about triaging and where to target effort. This may require reporting on complaints by the sector so they can be analysed for themes, and to identify the need for any early targeted investigations.



### **Analytical and regulatory skills**

Capability and skills for analysing information and making regulatory decisions will be needed. This can be provided by the skills and judgement of staff in the integrity arrangements, and access to external technical expertise if needed.

### **Flexibility to mature the approach**

Consideration should be made to making legislation permissive using a principle based approach, including for any NCSI if it is decided that this should be incorporated in legislation. This can be supported by regulations, codes and rules that can be amended without legislative change.

**From a play, active recreation and sport integrity perspective, both options have the potential to provide for these factors, depending on detailed design and on building the required culture and capabilities.**

**In Option A**, the location of the Integrity Unit within Sport NZ provides opportunities to leverage Sport NZ's wider capability and sector expertise. This would provide advantages in supporting the sector to comply and in utilising sector knowledge to build data and insights to inform the regulatory approach. Regulatory expertise would need to be built, and a culture of a regulator. Even with an independent statutory role, its location within Sport NZ may mean that it is not perceived as being able to take a transparent, fair, and impartial approach due to concerns that it might be open to influence from other parts of Sport NZ and from HPSNZ.

As an independent agency, **Option B** could develop specialist expertise in supporting the sector to comply, in understanding integrity issues, and taking a targeted risk based approach. The Athlete Participant Support Unit provides capacity for an accessible and trauma-informed approach. Its independence increases the likelihood that it will be seen to take a transparent, fair, and impartial approach.

Both options could equally provide a phased introduction and development to mature the approach.



# SECTION 6: OPINIONS ANALYSIS

**In this section we assess the two options against the IWG design objectives, principles, and functions.**

**We also consider the options in the context of the sector and guidance on New Zealand's machinery of government.**

**Examples referred to in this section are provided at Appendix 5.**

## How do the options deliver against the design objectives and principles?

We outline our high-level assessment of the of the options against the IWG design objectives and principles at Appendix 6.

The case study on the health complaints system at Appendix 5 illustrates – at a large scale - a regulatory system operating under a code of practice with an advocacy service for complainants.

Below, we consider the options further with respect to critical design objectives.

### Unweighted criteria

If the design objectives are of equal importance, both options are feasible provided that Option A establishes the Unit as an independent statutory role. To different degrees they meet (or have the potential through detailed design to meet) the design objectives and principles. They also have the potential to

provide all the required functions, and they are both consistent with forms of regulatory arrangements operated in New Zealand.

Consultation with the sector, and the view of the IWG, however has identified the critical importance of three design objectives:

- **Athlete/participant centred**, with an emphasis on ensuring sector organisations comply in ways that work for athletes and participants, and providing safety to those who raise a complaint, from community participants through to high-performance athletes
- **Actual and perceived independence** particularly from Sport NZ, based on the view that one entity cannot both police and promote sport, and
- **A simple accessible system** providing for a one-stop shop for all integrity matters.

### Option A

Option A has the potential advantage of being able to leverage the resources within Sport NZ and use its own organisation's compliance levers of recognition and funding. It is quicker and cheaper to establish, counterbalanced by the additional time it would take to change culture and build trust in the strengthened independence of the integrity function. The scale of this change should not be underestimated, and was not viewed as realistic by the IWG and stakeholders, particularly given the competing priorities of Sport NZ which make a sustained focus on integrity more challenging.

Outside of anti-doping and competition manipulation, perceived independence is distinctly weaker in Option A even with an independent



statutory role. The recent announcement that Sport NZ and HPSNZ will operate under one Chief Executive may further compromise actual and perceived independence of this option.

This option (with a statutory independent role) could be further strengthened against the design objectives by incorporating – with attendant increases in cost - elements of Option B's stronger athlete/participant focus, for example the Athlete Participant Support Unit, and by extending face to face education and capability building to clubs.

Dispute resolution must be impartial and independent, so Option A would need to ensure that enforcement, including the disciplinary panel, is fully separated from the complaints function.<sup>8</sup>

Whilst Option A appears more complex than an SIO, this is likely to be mitigated by approaches to the SRCMS that would quickly be re-directed to the right place.

## Option B

Even if Option A with a statutory independent role was strengthened regarding athlete/participant centred approach, Option B provides for stronger actual and perceived independence. However, it is more costly to establish and build. It also creates an arrangement where two organisations have overlapping functions and would need to negotiate with each other. This can incur inefficiencies and make it harder to achieve consistency of standards.

However, once established, the SIO would also gain internal efficiencies, with one triage process and one education/engagement function across all integrity matters.

## Machinery of government considerations

Feasibility analysis of the options is, however, broader than an assessment against the IWG design objectives and principles, and also require assessment with respect to government expectations and the machinery of government (MOG).

Te Kawa Mataaho Public Service Commission provides guidance to inform consideration of machinery of government changes. It states that machinery of government changes should not be considered as the solution to all problems pertaining to government agencies. It is important for both the problem and overall context to be considered before such changes are made.

Behind this is a desire to reduce fragmentation and cohesion of the public service through a tendency to make structural change as a response to a problem, rather than setting and sustaining priorities, and making cultural and capability changes.

In particular, there is a high bar for establishing a new agency. A new agency should not be established where a new role or function could be appropriately incorporated within an existing agency.<sup>9</sup>

<sup>8</sup> Ministry of Business, Innovation and Employment, Best Practice Dispute Resolution Standards, retrieved from: <https://www.mbie.govt.nz/assets/best-practice-dispute-resolution-standards.pdf>.

<sup>9</sup> State Services Commission [now Te Kawa Mataaho Public Service Commission], Reviewing the Machinery of Government, retrieved from:

[https://www.publicservice.govt.nz/assets/Legacy/resources/reviewing-mog\\_0.pdf](https://www.publicservice.govt.nz/assets/Legacy/resources/reviewing-mog_0.pdf). p. 18. This is supported by the New Zealand Legislation Design and Advisory Committee (LDAC) Guidelines 2021



*“Machinery of government changes do not tend to happen merely because of the existence of an abstract set of design criteria. Context is crucial. They tend to occur in response to perceived problems or inadequacies. Criteria may have a significant effect on the ultimate design, but other considerations will also be relevant such as political judgements about the suitability of different organisational forms, or practical considerations about the relative ease with which changes can be made”.*

*Former State Services Commissioner D K Hunn*

## The independence question

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The IWG, and sector stakeholders we consulted with, are of the view that the actual and perceived independence of integrity arrangements in the play, active recreation and sport sector meet the required bar for a new independent entity as this is the only way that the system will be trusted and used. Given Option A could be strengthened against other critical design objectives, the key consideration is the degree of independence required.

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## When is independence a critical consideration in machinery of government decisions?

### Independence supports long term effectiveness

OECD *Principles for the governance of regulators* states that independence can provide more credible conditions for the administration of regulation over the long term, enable more consistent and stable decision making, and avoid of conflicts of interest.<sup>10</sup>

The degree of independence that is appropriate depends on the circumstances. Independent regulators should be considered where:

- a regulator needs to be seen to be independent to maintain public confidence
- government and non-government entities are regulated under the same framework
- decisions have a significant impact on particular interests, so impartiality must be protected.

By contrast, more political influence may be required where political control is needed to guard against regulatory capture, decisions concern political imperatives or value judgements rather than technical expertise, or there is significant exercise of state power.<sup>11</sup> While consideration of freedom from political control is most easily considered within a central or local government context, political control or influence can also exist within other forms of bodies that have elected or non-competency based representation. These forms of political representation are commonplace in the voluntary sector, and in organisations seeking funding or support within the sector.

<sup>10</sup> OECD. Principles for the governance of regulators (2013) Paris, France.

<sup>11</sup> Productivity Commission Report.



## Dimensions of independence

The Productivity Commission notes that a related and critical consideration for regulatory form is the extent to which it should be made independent from both politicians and regulated parties.<sup>12</sup>

Independence operates on a spectrum and can be achieved across multiple dimensions, many of which relate to institutional form. Key dimensions in a regulatory context are:<sup>13</sup>

- **regulation independence** - the ability to adjust the regulatory settings and rules
- **operational independence** - the ability to undertake functions without interference
- **budgetary independence** - funding arrangements that protect the regulator from external pressure
- **institutional independence** - formal distance from other institutions, particularly for appointment and dismissal of leadership.

In addition to this, legal status, empowered culture, objective leadership and effective relationships are essential components of independent regulatory behaviour.

Independence also needs to be considered from a wider state sector conduct perspective. Generally, there is discomfort in a single entity holding both promotional functions and regulatory functions of the same parties as it can give rise to concern about appropriate levels of objectivity and impartiality.<sup>14</sup> These concerns can be managed by ring-fenced arrangements or functional separation, but must be done with intention, transparency and with the support of leadership.

<sup>12</sup> Productivity Commission Report, F9.1.

<sup>13</sup> Productivity Commission Report.

The case study of the Independent Police Complaints Authority (IPCA) at Appendix 5 is an example of a context where perceived independence was seen as critical.

## Independence of regulatory functions

The degree of required independence varies across the suite of regulatory functions that would be provided under both options.

We consider the system stewardship function could be feasibly undertaken in both options, assuming independent oversight can be achieved to ensure that this remains a priority and is undertaken effectively.

## Independence in Option A

Option A with a statutorily independent function provides for actual independence but does not have institutional independence as it reports to the Sport NZ Board who set the regulatory strategy.

## Lower conflicts of interest with Sport New Zealand as educator/communicator

There does not appear to be an insurmountable conflict of interest with Sport NZ's delivery of the preventative functions of a regulator, including information, education and capability building. It also has relevant capability, knowledge and expertise and existing relationships with the sector. In our view, further efficiencies might be achieved if Sport NZ was a third-party regulator regarding delivery of some aspects of education and capability building activities within its own programmes, with standards set and monitored by the SIO. An example of this model is Waka Kotahi, which uses

<sup>14</sup> See page 64, <https://www.publicservice.govt.nz/assets/Legacy/resources/Report-of-the-inquiry-into-the-use-of-external-security-consultants-by-government-agencies.pdf>.



third parties to conduct warrants of fitness. Regarding integrity, this could be applied for example to Sport NZ's capability building programmes.

The concern here is that these key functions could not rely on focused attention on integrity due to competing priorities and Ministerial direction, and a culture that may not be aligned between the two entities.

### **Greater risk for enforcement functions**

By comparison, conflict of interest is a greater risk for the functions of dispute resolution and enforcement in Option A, given Sport NZ would both promote and police sport.

### **Independence in Option B**

Option B achieves actual and perceived independence across all dimensions of independence.

The challenge for Option B is to achieve arrangements that provide actual and perceived independence from Sport NZ, but simultaneously retain the co-ordination and collaboration necessary to ensure alignment with Sport NZ's core functions and its relationships with national and recognised organisations which are a lever in delivering its outcomes. For these reasons, a close and productive relationship is critical, and there are risks that Sport NZ's mandate to promote sport would at times make this challenging. If Option B is chosen, this should be a key consideration in detailed design.

## **Regulatory outcomes and independence**

Ultimately, regulatory arrangements need to be designed to achieve outcomes. In this instance, the outcome is that people who engage in play, active recreation and sport are safe. It does not turn only on the known scale of harm, but also its depth.

**From a play, active recreation and sport integrity perspective**, the overarching question is the materiality of actual and perceived independence to achieve regulatory outcomes. Is there a real and differentiated purpose for - and perception of - a new entity which justifies the greater cost and the reduction in public service cohesion? The IWG are firmly of the view that there is.

Whilst Option A is likely to be less expensive than Option B, an outcomes focus must also weigh costs against results, and consider whether the cost of creating a new entity is greater than the result of harm from a system that is not trusted and therefore not used.

Ultimately, the decision as to the preferred option turns on a judgement as to the relative weighting of the IWG design objectives and principles, and whether this meets the standard for a separate entity as set out in the machinery of government guidance.

This is now a consideration for the Sport NZ Board, and a decision for the Minister, Government, and ultimately Parliament.

## **Assessment of organisational form options**

Below, we assess the organisational forms for both options that have been proposed by the IWG, drawing on:

- the IWG design objectives and principles that are relevant to organisational form, including actual and perceived independence, cost effectiveness, and providing for clear accountabilities, collaboration and system stewardship, and a manageable scale of change
- Te Kawa Mataaho Public Service Commission machinery of government (MOG) guidance on choices of organisational form which



states that context, governance, accountability, and independence are key considerations for determining organisational form. The guidance is set out at Appendix 7.

While the IWG and sector stakeholders cited independence from Sport NZ and from self-regulating but non-compliant NOs as the most important dimension of independence, some noted that independence from the Minister is also a consideration in order to protect a sustained focus on integrity free of political interference. Equally, this also protects the Minister from potentially unpopular decisions by the regulator. Independence must be balanced with the ability of the Minister to direct change where there is poor performance of an entity. Given recent regulatory failures, this is a consideration that should be taken into account.

## IWG proposed organisational forms

The IWG has suggested that:

- **Option A** would sit within Sport NZ, a Crown Agent, alongside an expanded DFSNZ which would remain as an ICE.
- **Option B** would be a new independent entity which they suggest is likely to be an ICE.

Of the range of organisational forms available, the IWG suggestions are appropriate in relation to MOG guidance in that both options:<sup>15</sup>

- undertake non-commercial functions
- sit inside the executive branch, and
- provide a degree of independence from the Minister.

<sup>15</sup> State Services Commission, 2007, Reviewing the Machinery of Government, [https://www.publicservice.govt.nz/assets/Legacy/resources/reviewing-mog\\_0.pdf](https://www.publicservice.govt.nz/assets/Legacy/resources/reviewing-mog_0.pdf)

## What are the key choices for sport integrity?

### Organisational forms that should be discounted

We have excluded other non-commercial executive branch organisational form options as these do not provide sufficient independence. This includes a department or business unit in a Department, a non-statutory board, and an agency joint venture.

While a Public Finance Act Schedule 4 Organisation has a degree of independence, this model should only be used where there are clearly identifiable reasons why a Crown entity would not be suitable, and the agency's operations are small. These reasons are not apparent in this case.

### Feasible organisational forms

Organisational forms that have the potential to meet both the IWG design criteria, and MOG guidance are:

- a Crown Agent with an independent statutory function for sport integrity
- an Autonomous Crown Entity (ACE)
- an Independent Crown Entity (ICE).

In practice, the forms are not strongly differentiated because Ministers rarely exercise formal influence over such entities. However, it cannot be ruled out, and the Productivity Commission has found that “the choice of institutional form is important because of what it signals about the expected independence of the regulator, rather than the legal differences between them.”



Key decisions as to the most suitable organisational form will therefore depend on the level of independence that is considered to be sufficient, along with cost and efficiency considerations.

### **Optimal organisational form for Option A**

Retaining DFSNZ as an ICE is appropriate.

Crown Agents are statutory Crown entities that must give effect to Government policy directions, and this presents risks regarding independence and a sustained focus on integrity. However, a Crown Agent with an independent statutory role for its integrity function remains as a feasible form as this provides for independent decision making.

This statutorily independent function increases independence, accountability, transparency and focus which in turn increases public confidence in the function. It also provides independence from the other potentially conflicting priorities of Sport NZ, while ensuring a degree of alignment with overall strategy. We note that even with statutory independence, the perception of reduced independence may remain.

An example of a Crown Agent with statutory functions situated within it is Waka Kotahi with the role of Director of Land Transport reporting to the Chief Executive, but with independent statutory functions and decision-making discretion. This is illustrated in a case study at Appendix 5.

### **Optimal organisational form for Option B**

On balance, we have discounted an ACE. This organisational form has a degree of independence as it is a separate entity governed by a board which must only have regard for government policy.

We consider that an ICE is more appropriate for Option B as it is the most independent organisational form within the public service. Furthermore, given that Option A places arrangements within Sport NZ, a Crown Agent, an ICE enables a key point of distinction for comparison.

The trade-off of this increased independence is that the Minister has a reduced ability to hold the regulator to account for poor performance.

Table 4 below provides a detailed description of the features of the two potential options for organisational form. It contrasts the Crown Agent and Crown Agent with a statutorily independent function for Option A, with that of an Independent Crown Entity for Option B and for DFSNZ in Option A.



**Table 4: Organisational forms**

	Option A Integrity Unit		Option B and DFSNZ in Option A
	Crown Agent	Crown Agent with a statutorily independent function	Independent Crown Entity
<b>Description</b>	All relevant functions would be housed in Sport NZ which is a Crown Agent. A Crown Agent is a stand-alone agent governed by a Board appointed by the Minister.	The legislation would provide that a particular function or functions within the Crown Agent must be carried out independently. This typically involves establishing an independent Directorship.	All relevant functions would be housed in an Independent Crown Entity (ICE). An ICE is a stand-alone entity governed by a Board which is appointed by the Minister.
<b>Accountability</b>	Regulatory accountabilities would sit with the Board which is accountable to the Minister. There would also be an Integrity Advisory Committee, comprised of board and non-board members and appointed by the Board with support of the minister. The Committee would oversee operations of the Integrity Unit, maintain an overview the integrity landscape and provide advice and recommendations to the board on the same. The Chief Executive would report to the Committee on integrity matters but would be accountable to the Board.	Regulatory accountability sits solely with the Director. The Director is an employee of the agency and would be able to delegate the independent functions or powers. Terms and conditions of employment may be agreed between the Director and the Board.	Regulatory accountabilities would sit with the Board.
<b>Independence</b>	The Board puts the entity at arms-length from the Minister. However, the entity must "give effect to" policy that relates to the entity's functions and objectives if directed by the Minister, so there is a high degree of ministerial oversight. The Minister also appoints the Board and may remove it at their discretion. The Board appoints the Chief Executive. The Minister of State Services and the Minister of Finance may jointly direct Crown entities to support a whole of government approach.	The legislation provides that the functions and powers of the Director must be exercised independently of the Board and Minister. The Board would set the parameters for the Director to operate within including the strategic direction and focus, funding and resourcing, regulatory strategy and enforcement approach. The Director would likely sit on the leadership team and contribute to overall direction and performance.	The ICE is governed by the Board, which is appointed (and can be removed for just cause) by the Governor-General on the advice of Minister, after consulting the Attorney-General. The Minister has no powers of direction, meaning there is a high degree of independence from ministerial influence. The Minister of State Services and the Minister of Finance may jointly direct Crown entities to support a whole of government approach.
<b>Legislative establishment</b>	The Sport and Recreation New Zealand Act 2002 may require amendment to explicitly include integrity as a function.	The Sport and Recreation New Zealand Act 2002 would require amendment to establish the independent Directorship.	The ICE would be established either by new legislation or by amendment to Sports Anti-Doping Act 2006 to establish the new agency including DFSNZ.
<b>Examples</b>	Crown Agents are used for a range of functions including regulatory functions. Examples include WorkSafe NZ, Civil Aviation Authority, Maritime New Zealand and Environmental Protection Authority.	The statutorily independent function is often used to provide regulatory independence and accountability. Examples include Waka Kotahi NZTA (Director of Land Transport), Maritime NZ (Director of Maritime NZ) and the Civil Aviation Authority (Director of Civil Aviation). The Director of Maritime NZ and Director of Civil Aviation are also the chief executives, but the Director of Land Transport must not be the Chief Executive.	An ICE is typically used for quasi-judicial and adjudicative functions (Independent Police Complaints Authority and the Commerce Commission), certain investigative roles within regulatory frameworks (Transport Accident Investigation Commission) and entities that have a range of powers to promote, monitor and prosecute against standards (Human Rights Commission and Office of the Health and Disability Commissioner).



## Legislative changes

### Required changes to legislation

Under both options:

- the Sports Anti-Doping Act 2006 will require amendment to expand DFSNZ's remit to include competition manipulation.
- The Sport and Recreation New Zealand Act 2002 will also likely require amendment across both options to provide for or ensure alignment with the new integrity approach.
- Consequential amendments to other legislation may also be required, for example if the Human Rights Commission and the Office of the Children's Commissioner were to establish designated roles, and the Crimes Act regarding competition manipulation.

### Approaches to legislative change for Option B

Option B could be established either by:

- repealing the Sports Anti-Doping Act 2006 and creating a new act, or
- amending the Sports Anti-Doping Act 2006 to incorporate the wellbeing dimensions of integrity and the NCSI. The Act would also need to be renamed. This would appear to be a feasible option to consider as the powers and functions in the Act are compatible with those in Option B.

Both options create a new entity. The advantage of amending the Sports Anti-Doping Act 2006 is that it reduces the change effort in the drafting of legislation. In addition, MOG guidance sets a high threshold for establishing a new entity and prefers amending existing legislation where possible.

Countering this, amending an existing Act could risk perception that the agency is focused on anti-doping rather than a body with a mandate to oversee all integrity matters.

Again, choices need to be made about the degree of perceived independence that is required.

The potential legislative changes are set out in Table 5 below.

**Table 5: Potential legislative change**

Legislation	Option A	Option B
<b>Sport and Recreation New Zealand Act 2002</b>	See below. Further amendment will be required if a statutorily independent function is proposed.	Amendments will likely be required to ensure alignment, integration and compatibility with the new agency and system.
	Under both options, amendments may be required to reflect the new functions of the Unit/Agency, to establish (and if required to mandate) the NCSI, enforcement, compliance, and investigatory powers, and otherwise ensure alignment with Sport NZ. Amendments may also be required to align with the Macolin Convention.	
<b>Sports Anti-Doping Act 2006</b>	DFSNZ is expanded to encompass competition manipulation and to align with the Macolin Convention.	Either repealed, or amended to create the new entity under a new name and incorporating DFSNZ.
	Under both options, the jurisdiction of the Tribunal is broadened to hear appeals from the Disciplinary Panel, and to potentially increase numbers.	
<b>New legislation</b>	Not required.	Required to establish a new agency, and associated functions, should the agency not be established by amendments to the Sports Anti-doping Act 2006.
<b>Human Rights Act 1993, Children's Commissioner Act 2003, Health and Safety at Work Act 2015 and the Crimes Act 1961 (and potentially other legislation governing adjacent regimes).</b>	Across both options minor amendments to legislation governing adjacent regimes may be required to ensure the alignment of the new system. In particular, the functions of the Human Rights Commission, Office of the Children's Commissioner and WorkSafe have closely related and potentially overlapping functions in some areas, and there may be amendments required to the Crimes Act 1961 regarding competition manipulation.	



# SECTION 7: CHANGE EFFORT – IMPLEMENTATION AND TRANSITION

This section examines the change effort required in both options and sets out the approach to implementation and transition to new arrangements. This section informs the estimates for transition and operating costs in Section 8 below.

In preparing this section we have drawn on our experience of changing and establishing other public service agencies, regulatory good practice, and of good change management disciplines.

## Considerations

There are two core components to thinking about implementation and transition to any strengthened integrity system:

- the first relates to the **implementation** of the new integrity system
- the second is **how the new integrity system is introduced** to the regulated parties, and the transition that the regulated parties will need to undertake.

### New knowledge, capabilities and activities

Across both dimensions, establishing a strengthened integrity system requires new and extended knowledge, capabilities and activities for both the integrity system and the regulated community. This is the case for both options, with the proposed introduction of the NCSI and expected changes in behaviours, an expanded remit, and new or enhanced regulatory functions. However, the scale of change varies across the two options, and implementation pathways should reflect and support the level of effort required for each option.

### Attend to culture and context

In both options, explicit attention to the culture of the integrity system will be important, to ensure the mindset and behaviours of a trusted and impartial regulator.

In addition, implementation considerations need to take account of:

- How prepared the regulated community is, and the degree of change required for them to comply.
- Whether systems and processes are in place.
- How much capacity and funding can be made available.

## Transition One: Implementing the new integrity system

### Transition planning should begin quickly

Once Cabinet decisions about the form, location and funding for the new integrity system are made, officials will need to move quickly into planning to operationalise the system to ensure it is ready to 'go live' when legislation is passed.

If the establishment phase does not begin shortly after decisions, it is likely that the timeframe to transition from current arrangements to the new system will be significantly extended. Delays create particular risks around retention of staff where there is already a shortage of people with the required skills and experience and are likely to impact credibility and goodwill with the sector.



## A Transition Unit should carry out the programme of work to establish the new integrity system

For both options, we suggest that a Transition Unit is set up to plan transition, with a focus on the development of policy (including the proposed NCSI) development of the detailed design of new arrangements, and preparing the sector for the change. The NCSI is likely to require substantial consultation with the sector.

Although the change effort for Option A is more limited than for Option B, it is not small. A separate Transition Unit would ensure that operational delivery of the current integrity functions is not diverted by transition activities. It also ensures that the design of the new arrangements is independent of Sport NZ, prior to the establishment of a statutory independent role.

The Transition Unit is likely to be best housed within Sport NZ as the lead government policy agency for sport and recreation, responsible for developing legislation/regulations that will establish the new integrity system. However, it will otherwise be independent of Sport NZ. The performance of the Transition Unit would be overseen by the Ministry for Culture and Heritage in its role as Crown monitor for Sport NZ.

### Staffing

The Transition Unit would require a Director and a mix of contractors and staff, some of whom could be secondees from relevant agencies. It should also include expertise in regulation, alternative dispute resolution models including tikanga Māori, and be supplemented by professional services to support planning, policy development and legislative change, and sector consultation. The Unit would benefit from engagement with the IWG to provide continuity, and draw on their expertise.

### Diverse athlete/participant focus

Given the core design objective of an athlete and participant centred approach, an interim Athlete/Participant Advisory Working Group could also

be formed to work closely with the Transition Unit. The working group should have a diverse membership with a range of athlete/participant experience, including people with experience of harm, people with disabilities, and people with competence in te ao Māori. Membership should also be reflective of the diversity of New Zealand.

The Working Group would engage in aspects of the Transition Unit's work such as:

- design and consultation on the NCSI
- detailed design of the preferred option, including regulatory powers, key roles and capabilities, systems and processes
- design of regulatory strategy and practice
- engagement and education strategy and practices
- the purpose and functions of any ongoing advisory groups
- engaging with and reporting back to iwi/Māori, and to the sector.

### Sector advisory group

Establishing a sector advisory group should also be considered, to ensure good communication with the sector, to begin to build the relationships the integrity system will need to have with sector stakeholders, and to ensure a practical understanding that can inform the detailed design of the new arrangements.

### Timebound

The Transition Unit and its advisory bodies would be wound up when the enabling legislation is enacted, and the integrity system is operational. Some staff may become part of the new integrity arrangements.

### Focus of the Transition Unit

The Transition Unit **would not function as the new integrity system**. Its focus would be on operationalising the preferred option so that it is ready to function when its legislation is enacted. Up until that point, responsibilities for sport integrity are unchanged, with the Sport NZ Integrity team and DFSNZ



still in place. The Transition Unit would need to work closely with the existing arrangements to ensure there is a smooth transition to the new system, and to coordinate and align on any interim extensions to the work of both existing bodies, which should be consistent with the intent of the preferred option and to the extent that existing legislation allows.

Policy decisions will include learning lessons from Australia as outlined in the IWG report, where there has been a low take-up of their Sports Integrity Framework, and an inability to progress complaints (outside of doping) in those organisations who have not signed up to the framework. This will need to be balanced with a carefully designed threshold for complaints, and for matters before the Disciplinary Panel, to avoid either Option being overwhelmed.

During detailed design and the development of a detailed business case, the Transition Unit will need to be mindful of the expectation that arrangements will be of an appropriate scale for a country of our size.

The key activities the Transition Unit will need to deliver are set out in Table 6 below.

**Table 6: Key activities for the Transition Unit (both options)**

Focus	Key activities
<b>Transition and implementation planning</b>	<ul style="list-style-type: none"> <li>• Prepare an implementation plan.</li> <li>• Plan to develop detailed organisational design.</li> <li>• Develop a plan to transition from the existing arrangements to the new model, including transition of existing staff if required.</li> <li>• Prepare a recruitment strategy, including supporting the appointment of a new Chief Executive if Option B is the preferred model.</li> <li>• Establish advisory group(s).</li> </ul>
<b>Establishing an operating model, consistent with the design objectives and principles</b>	<ul style="list-style-type: none"> <li>• Develop a regulatory strategy and approach to guide regulatory focus, decision making and consistency.</li> <li>• Detailed design of functions, accountabilities, roles, responsibilities and capabilities within and between different entities within the system.</li> <li>• Develop an accreditation system for NOs choosing to opt out of the NCSI.</li> <li>• Develop monitoring strategies and channels for information sharing across the integrity system.</li> <li>• Build the foundations of a culture founded on fundamental human rights, including athlete rights and welfare and the rights of the child, and a te ao Māori approach, inclusive of the diversity of contemporary Aotearoa New Zealand.</li> <li>• Set KPIs and reporting requirements within the new arrangements.</li> </ul>
<b>Policy, legislative change, and new or enhanced regulatory functions</b>	<ul style="list-style-type: none"> <li>• Leading the development of and consultation on the NCSI and preparation to ratify the Macolin Convention, in close collaboration with Sport NZ, DFSNZ and the sector.</li> <li>• Considering key policy choices including whether the NCSI is mandatory, the threshold for complaints and cases to the disciplinary panel, alternative pathways for resolution, and the provision of legal assistance.</li> <li>• Working closely with Sport NZ on new or enhanced legislation, changed regulations, consequential amendments, and advice to the select committee and Ministers on establishment, transition and functions.</li> </ul>
<b>Communications and stakeholder relations</b>	<ul style="list-style-type: none"> <li>• Communicating with the sector.</li> <li>• Preparing the sector to comply.</li> <li>• Consultation with the sector on the NCSI.</li> </ul>



- Maintaining a close relationship with the Ministry for Culture and Heritage (including planning for transition) and other key government agencies.

#### Funding

- Costing of the new integrity system, including advice on any detailed business case for additional funding.
- Identifying potential non-Crown sources of funding or charges for cost recovery.

We expect the Transition Unit would be in close communication with those currently operating integrity arrangements, to ensure that decisions and actions being taken by one does not have unintended consequences for the other. As described below, there would be value in having the Senior Officials group maintaining oversight of how different actions and decisions being taken in the current regime, and in the development of the new regime, impact the other.

Planning for the transition between arrangements will be a critical activity for the Transition Unit. Key transition points – in particular the nexus point between role of Transition Unit, enactment of legislation/new arrangements and responsibility for current arrangements and staff – will need to be mapped out to avoid risks around the performance of the integrity system and ensure there is a smooth transition for staff and sector stakeholders.

### Senior officials will provide connection with the Crown’s work to establish the new integrity system

Sport NZ officials will continue to provide policy advice to Ministers, including on the funding for the new integrity system, and support the passage of legislation, engaging closely with DFSNZ. They would also:

- design appropriations and accountability documents
- stand-up monitoring arrangements as required, for example relationship agreements and letter of expectations

- be involved in drafting legislation and regulation development
- advise on the appointment of board/advisory board members
- support staff transfer processes, as appropriate.

A Senior Officials group should meet regularly with the Director of the Transition Unit to ensure there is a good connection between the two programmes of work. The group will comprise the CEs or a nominated DCE and senior staff from Sport NZ and DFSNZ.

To support a smooth transition, this group should maintain oversight of how different actions and decisions being taken in current integrity arrangements, and in the development of the new arrangements impact the other.

### A Transition Board will need to be formed to govern the establishment programme

#### Option A

For Option A, we suggest this could be a joint sub-committee of the Boards of Sport NZ and DFSNZ, which would be wound up on completion of the establishment.

#### Option B

For Option B, a small Transition Board would be set up.

A Transition Chair would be recruited with appropriate skills and experience. The Chair could be the Chair Designate of the new entity for continuity of leadership and accountability reasons.

The remainder of the Transition Board will comprise individuals with a range of appropriate skills and experience, including in particular entity establishment and change management, sector knowledge, athlete/participant expertise, and knowledge of human rights and tikanga Māori. Some of these members should also transition to the new entity Board.



A key task of the Transition Board will be to recruit the Chief Executive Designate of the new entity, who will take an active role in leading change and stakeholder engagement. This will provide additional certainty to affected staff and stakeholders and firmly establish leadership, as well as a clear direction. It will also ensure that accountability for delivery post-transition sits with those responsible for establishment.

## Transition two: Introduction of the new integrity system to regulated parties

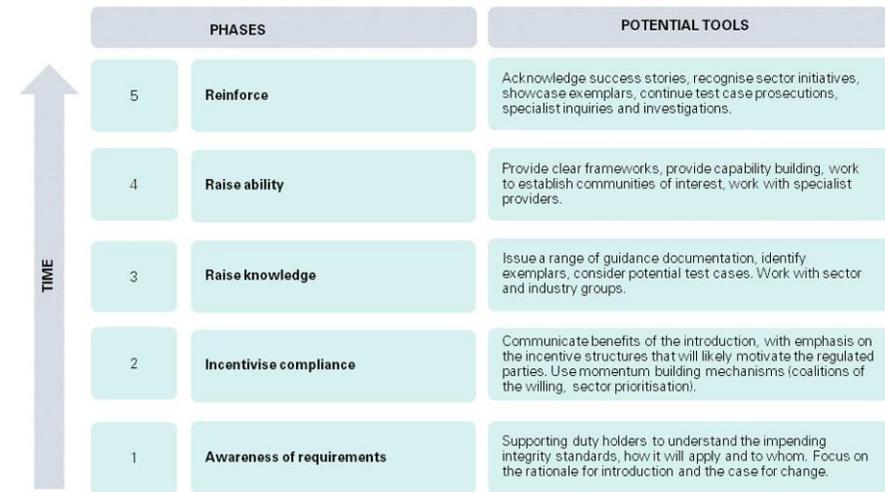
Alongside the introduction of the new integrity arrangements/structures, consideration will need to be given to how to:

- consult with the sector in the development of the NCSI, including whether it is mandatory or opt-in
- support the regulated parties to build awareness, motivation, and capability to meet the standards under the NCSI, comply with new requirements, and to make necessary changes to legal and policy settings – especially before pursuing enforcement of the integrity standards
- establish an accreditation system, including monitoring arrangements, for organisations that seek to operate their own integrity system, compliant with national integrity standards, functions and processes.

As set out in Section 5 above, the relative regulatory immaturity in the sector, and significant resource constraints for most sports and recreation bodies, it is likely that the transition period will require considerable engagement with and support for the sector, and may include a phased introduction.

Transitioning the regulated community can draw on transformation and change disciplines, and regardless of the option selected will comprise core phases with tools available at each phase to support regulated parties to comply. This is set out in Figure 3 below.

**Figure 3: Phased approach to regulated parties**



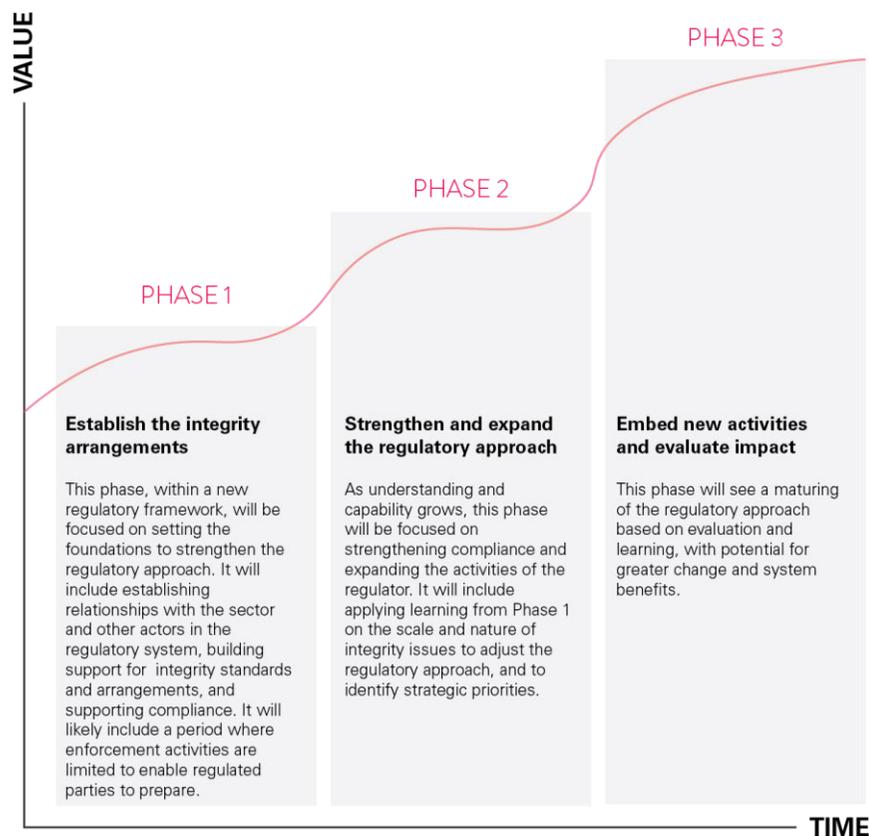
## Implementation Pathways

We have broken the implementation pathway into three key phases to build the changes sustainably and enable learning and experience from one horizon to be applied to the next. The period for each phase will depend on the scale of change envisaged in the preferred option and the availability of resources.

The phased approach is set out in Figure 4 below. It will be important to operate along all three phases concurrently, preparing for the phase ahead. Time, on the X axis, is the cycle to move through the phases, not a prompt about when to pay attention. The Y-axis represents the growth in the value that the regulator can contribute to the policy objectives, and to parallel policy processes, by attending to all three phases simultaneously.



**Figure 4: Phased approach to implementation**



## Risks and mitigations

All change brings risk, and the key implementation risks and their mitigations are set out at Appendix 7.

## What are the expected timeframes?

For both options, it is likely to take 12-18 months to build the new integrity arrangements:

- Whilst changes to structural arrangements are smaller in Option A, the development of a NCSI, preparing the sector, and the passing of legislation will take the same amount of time as Option B.
- Legislative changes are smaller in Option A, so work to set out the policy rationale and drafting will be easier. However, the 'go live' date is dependent on the passage of legislation which can take up to two years for both options, independent of the complexity of the changes.

## How will the success of the investment be evaluated?

In both options, the implementation and operation of the new integrity system should be reviewed two years after it 'goes live'. This would be the minimum period to give time for the new arrangements to move from a 'start-up' phase into more of a business-as-usual mode.

The review should focus on the establishment and early operation of the new arrangements, and whether there is an evaluation structure in place to form a view on performance as implementation proceeds. It will also act as a point to 'take stock' of whether the capability profile of the regulator and its partnering arrangements are fit for purpose. As highlighted above, the focus of the regulator, in its compliance monitoring and enforcement activities, is going to shift over time, and this will be reflected in changing capability needs.

The KPIs that will form the basis of the evaluation of the new arrangements should be developed as part of the transition phase.



# SECTION 8: TRANSITION AND OPERATING COSTS

This section provides high level cost estimates for the establishment and operation of both options. Costings are necessarily based on a set of assumptions which will need to be tested during detailed design. A detailed business case will also be required, providing significantly greater analysis. We have approached this exercise by estimating the full cost of both options.

In assessing the scale of both options, we have drawn on our experience in comparable assignments, and our knowledge of the machinery of governments and public sector finance. We have also been mindful of the scale that can be accommodated in a country of our size.

Our remit did not extend to consideration of cost savings for the sector should the reforms be successful, resulting in fewer issues arising, or issues that do arise being resolved more quickly. Nor did it include an assessment of the personal cost of harm.

## Approach to estimating cost

We have drawn on a number of sources to estimate the cost of running both options:

- Conversations with experts within the sector

- Existing appropriations
- Financial reports
- Estimates prepared for Sport NZ's most recent budget bid
- Our experience in modelling establishment and operating costs in the public service
- Comparable examples within the public service.

We have developed estimates of the full cost of both options, taking a bottom-up approach to the resources that will be needed. An alternative approach would have been to estimate the incremental resources needed over and above what exists currently – the marginal cost – but we concluded a full cost model provides more completeness.

As set out in our introduction, both options are conceptual in nature, which is appropriate for the early phase of good practice organisational design. It does mean, however, that there are still significant questions regarding the scope and scale of some functions, including the NCSI, thresholds for complaints and access to support services, and stakeholder engagement including with Māori and the education sector. In the absence of this detail, our modelling is based on a set of assumptions which will need to be tested and refined through policy choices and detailed design of the preferred option.

Appendix 9 sets out the key assumptions we have used in developing these cost estimates.



## Transition costs

Section 8 above sets out the approach to establish the new arrangements for both options and provides the basis for estimating the transition costs.

Table 7 and Table 8 set out the estimated transition cost for each option using a “high” and “low” range over the two-year transition period.

### Option A

The transition cost estimate for option A is between § 9(2)(f)(iv)

§ 9(2)(f)(iv)

The main cost items in the estimate are:

#### Transition Unit

- Transition Director plus § 9(2)(f)(iv) transition FTE personnel in year 1, increasing to § 9(2)(f)(iv) FTE personnel in year 2 to undertake:
  - transition planning
  - development of and consultation on NCSI
  - engagement with the sector to understand and prepare for the new integrity standards
  - detailed design
  - develop the accreditation system.
- Transition Board, formed as a sub-Committee of the joint Sport NZ and DFSNZ boards
- Manager of the Integrity Unit recruited in Year 2
- One advisory committee
- Professional services to support making of funding regulations, detailed organisational design, workforce planning, specialist legal advice and sector awareness and engagement
- An overhead cost for each FTE and an allocation of Sport NZ’s shared services (the Transition Unit is assumed to be located in Sport NZ premises).

We have assumed that this will be a high priority for Sport NZ and that policy capability from existing resources can be relied upon to support the transition phase.



## Option B

The transition cost estimate for option B is between s 9(2)(f)(iv)

s 9(2)(f)(iv)

- An advisory committee
- Transition Board, including Chair Designate for the new entity
- Chief Executive recruited in Year 2
- Professional services to complement the FTEs and support making of funding regulations, detailed organisational design, workforce planning, specialist legal advice and ongoing sector engagement
- An overhead cost for each FTE and an allocation of Sport NZ's shared services (the Transition unit is assumed to be located in Sport NZ premises).

## Operating costs of new arrangements

### Current operating costs

We estimate the operating cost of the current arrangements to be approximately \$8.3m. This is based on Sport New Zealand budget figures for the Integrity function in 2022/23, the budget for the Sports Tribunal in 2022/23 and actual expenditure as per DFSNZ's latest annual report.

The main cost items in the estimate are:

#### Transition Unit

- Transition Director plus s 9(2)(f)(iv) transition FTE personnel in year 1, increasing to s 9(2)(f)(iv) FTE personnel in year 2 to undertake:
  - transition planning
  - development of and consultation on NCSI
  - engagement with the sector to understand and prepare for the new integrity standards
  - detailed design
  - develop the accreditation system.

**Table 9: Current operating costs**

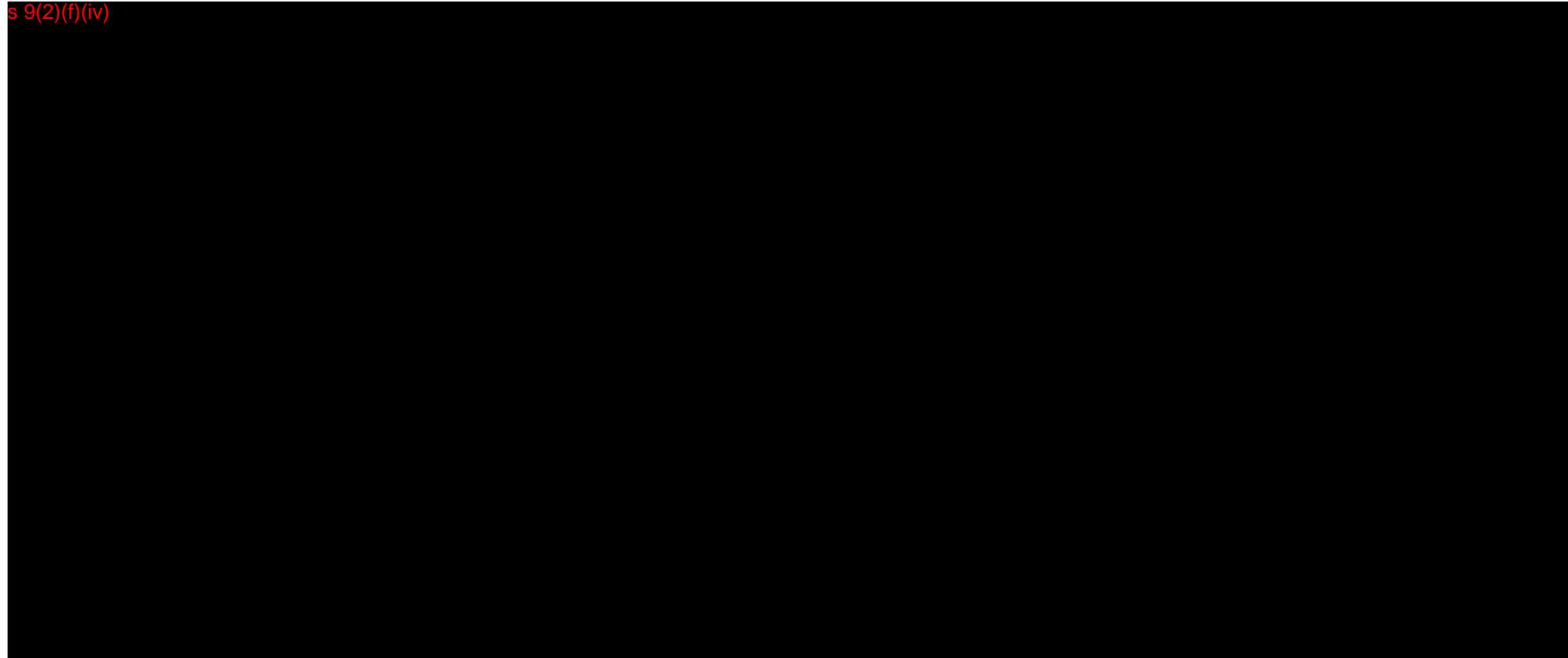
\$m	
Sport NZ Integrity function	4.4
Sports Tribunal	0.2
DFSNZ	5.1
<b>Total</b>	<b>9.8</b>



## Regulator operating costs – Option A

Our estimate of the operating costs of Option A are shown in the table below. Costs are estimated following the transition phase, in years 3 to 5, using a “low” and “high” range.<sup>16</sup>

s 9(2)(f)(iv)



<sup>16</sup> Note that the operating costs for Athletes Voice, Disciplinary Panel and the Sports Tribunal excludes salaries. A proportion of the Athletes Voice operating cost has been apportioned to FTEs/salaries to

ensure an appropriate allowance for shared services (which is based on a per FTE figure, listed in the assumptions in appendix 9).



The costs for both options are estimated up to year five, reflecting the expected timeframe for regulated parties to enter the new regulatory regime. Funding would typically be sought for the first four years only.

The cost estimate comprises:

- Governance - board sub-committee. DFSNZ board will continue to operate.
- A “high” and “low” scenario for recruiting the personnel for Sport NZ Integrity Unit and DFSNZ’s expanded functions.
- Services that would be purchased from third-party providers.
- Activity associated with establishing the new organisational arrangements.
- Additional resources and budgets for professional services to

complement the FTEs and support the expanded scope and scale, including travel, education, specialist legal advice, evaluation and ongoing sector engagement.

- Provision of services to support the expanded operations of Sport NZ and DFSNZ (i.e., overhead costs), shared services and capital charge and depreciation.

### Regulator operating costs – Option B

The figure and table show the new regulator’s cost profile for years 3–5 using a “high” and “low” range. Costs increase each year as the regime matures, awareness and trust builds, and complaints increase as anticipated.<sup>17</sup>

s 9(2)(f)(iv)

<sup>17</sup> Note that the operating costs for Athletes Voice, Disciplinary Panel and the Sports Tribunal excludes salaries. A proportion of the Athletes Voice operating cost has been apportioned to FTEs/salaries to

ensure an appropriate allowance for shared services (which is based on a per FTE figure, listed in the assumptions in appendix 9).





The cost estimate comprises:

- Governance – new stand-alone board.
- A “high” and “low” scenario for recruiting the personnel for the Agency’s functions.
- Services that could be purchased from third-party providers. In developing these cost estimates, we have assumed the complaints’ services will continue to be outsourced. If this function was to be brought in house, this may increase the cost of providing these services.
- Activity associated with establishing the Agency that can only be achieved once a legal entity has been formed (e.g., leasehold improvements and personnel transition costs such as possible pay harmonisation or redundancy).
- Provision of services to support the operations of the Agency (i.e., overhead costs), including a national office, shared services and capital charge and depreciation.



# APPENDIX 1: APPLYING GOOD DESIGN PRACTICE

## Approach to organisational design

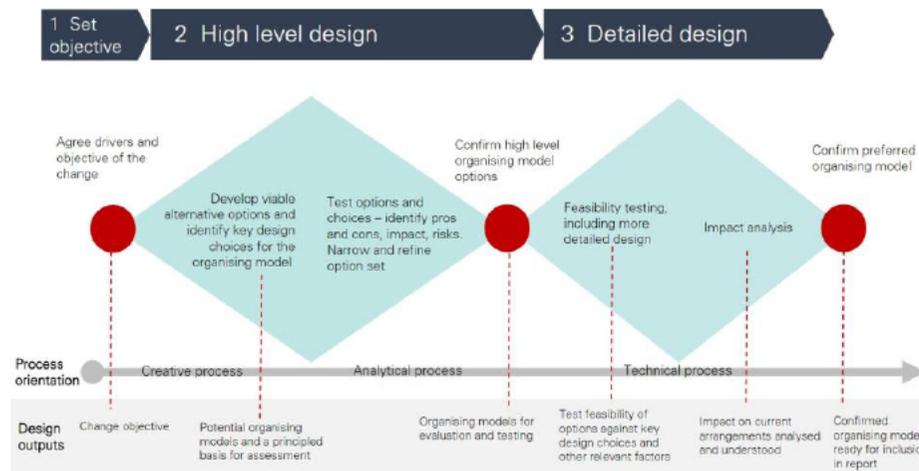
The design of an organisation or system comprises a range of interdependent elements that collectively shape delivery and performance. The design is a blueprint for resources and capabilities, and how these are organised to get work done.

Core design elements include functions and structure (accountabilities, responsibilities and their groupings), leadership, culture and ways of working, systems and processes, and people capabilities. In addition to these core elements, design can be considered through different perspectives, including stakeholder needs and expectations, and principles and approaches to guide how functions should be delivered.

The IWG applied this approach to develop design objectives, principles and functions against which potential options could be assessed. These are set out below.

However, structure alone will not achieve the intended objectives. Once the preferred structural option has been selected, the same principles can guide further work to design other dimensions of the system. For example, systems and culture need to be aligned towards ensuring the right people and parts of the system are well-connected where they need to be, even where these connections are not prescribed through structure.

Figure 5: Overview of the organisational design process



## The role of design objectives and principles

Design objectives and principles capture what is required for success. Ultimately it is necessary to consider an organisational design 'in the round', balancing the different elements and perspectives to find a design that best achieves the intended purpose of the organisation or system.

**Design objectives** capture the directional shifts or outcomes that a design needs to support and enable. All viable options will need to support these objectives.

**Design principles** are not the primary objectives driving a change, but they include considerations that are important to take into account. Each principle is framed as an "ideal state" in its own right. In practice, determining an optimal model involves balancing these principles and making trade-offs between them.

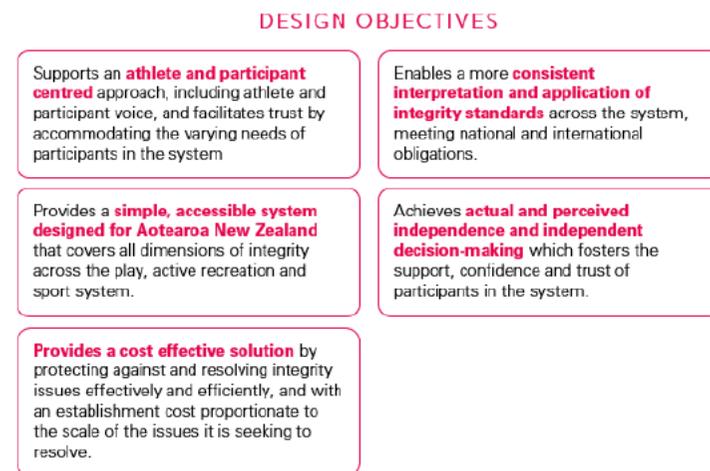


Design objectives and principles are used to:

- help identify the functions that are required in the organisation/system, supported by knowledge of the organisation’s work, and knowledge of common organising models - to identify alternative viable ways of clustering functions and accountabilities together
- guide the design of options, including alternative viable ways of clustering functions and accountabilities together, and the relative weighting of those functions, and
- a principled assessment of options for the organisational design.

The IWG design objectives and principles are set out in Figure 6 below.

**Figure 6: Integrity Working Group design objectives and principles**



## DESIGN PRINCIPLES

### Effective and efficient performance

- Provides levers to facilitate compliance with integrity standards
- Provides **clear accountabilities, roles, processes and pathways** which minimise duplication, informed by athlete and participant voice
- Supports and enables **capability building, information sharing and collaboration** across the system
- Provides for **system stewardship** to lead, monitor and evaluate the effectiveness of the system.

### Culture and values fit

- Enables a **culture founded on fundamental human rights**, including athlete rights and welfare and the rights of the child
- Provides for a **te ao Māori approach**, upholding the principles of Te Tiriti o Waitangi, and is inclusive of the diversity of contemporary Aotearoa New Zealand

### Implementable and adaptable

Including:

- **Manageable scale of change** to be fully established within five years
- Potential to be **resourced and funded**
- **Future-proofed** to adapt over a longer time horizon without requiring organisational re-design

### Stakeholder focus

- Builds and supports the **capability of all parties** to understand and comply with required integrity standards, and **assists with capacity challenges**
- Facilitates, supports and **empowers athlete and participant engagement** in the system
- Provides appropriate recognition of the **self-governance of private organisations**, whilst **maintaining standards and managing conflicts of interest**.

## Functions

Functions are the core services or set of activities undertaken.

The IWG has agreed a set of complementary functions that integrity system will require, designed to support each other to deliver value collectively.

These are set out in Figure 7 below.

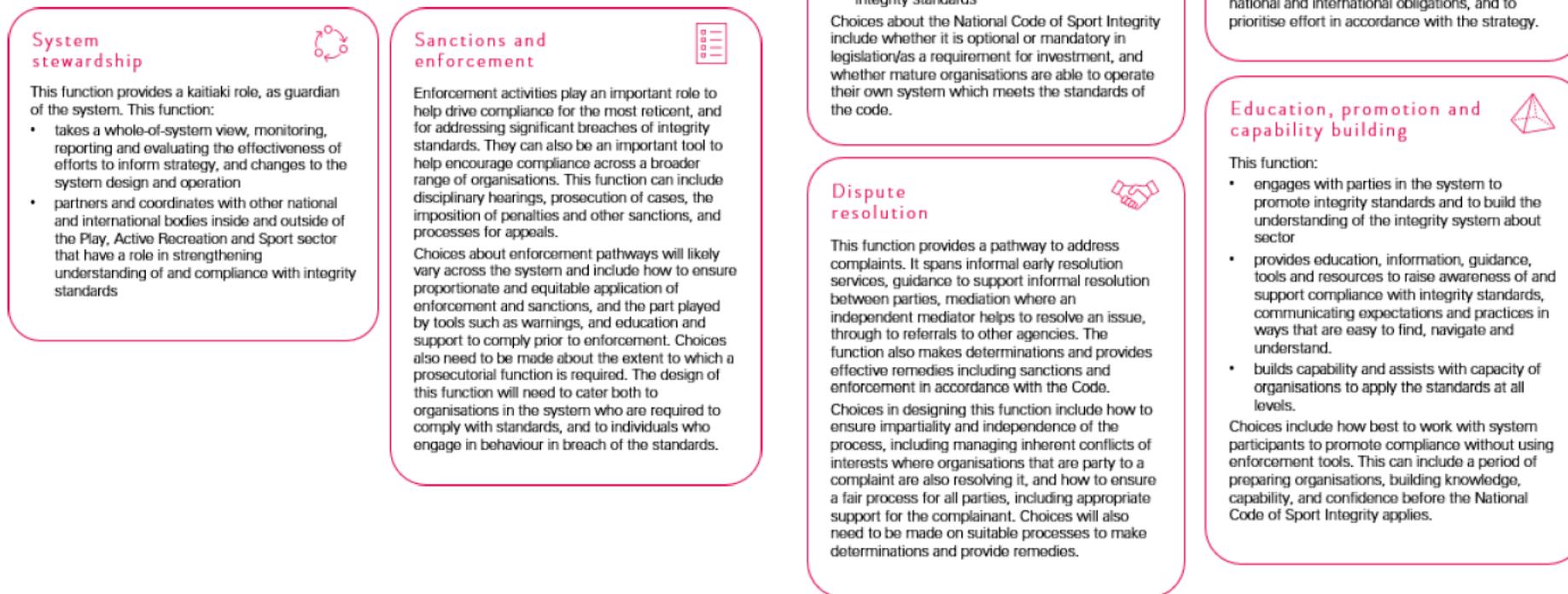
Choices will be required about the weighting given to each function, according to the approach required to achieve the design objectives,



determined by an understanding of the play, active recreation and sport sector. For example, the system may require an initial weighting towards education, communication and information to assist compliance, and this weighting may change over time as the sector matures in capability and understanding.

These functions are conceptual, showing groupings with common objectives, and can be applied across or between structural elements in the system.

**Figure 7: Integrity working group functions**



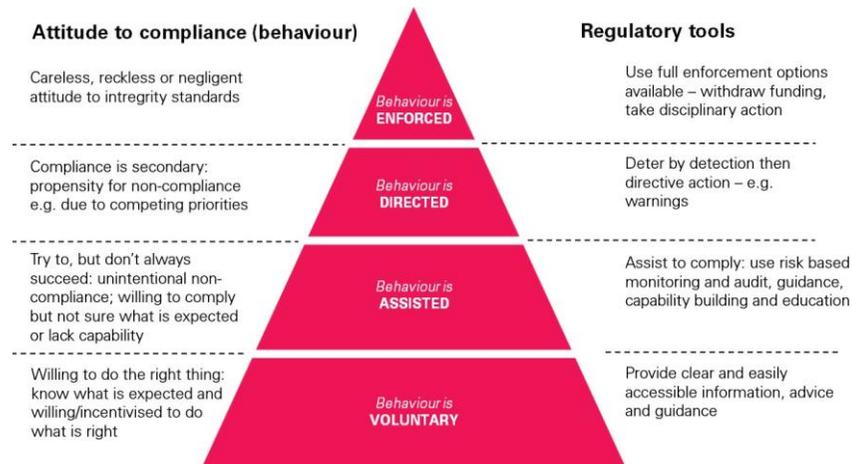
# APPENDIX 2: GOOD REGULATORY PRACTICE

Supplementary information on good regulatory practice outlined in Section 4.

## Responsive regulation

This framework is best illustrated through the diagram below.

**Figure 8: The enforcement pyramid applied to integrity standards** <sup>18</sup>



The goal when applying the enforcement triangle is twofold:

- to match regulatory interventions to the action required, and
- to seek to shift people further down the triangle, for example, shifting people from needing deterrence activities to supportive activities.

## Really responsive regulation

Increasingly, regulators are adopting so-called 'really responsive' regulatory approaches which focus on understanding the situation and context for different regulated communities. Any regulatory response will be highly contextual and attuned the attitudes and behaviours of different parties, the overall institutional environment; the logic of regulatory strategies and supporting tools, and overall performance – with the relationship between the regulator and its regulated community, and the ability to choose different enforcement strategies and sanctions, a key strength of the model. <sup>23</sup>

## Risk based regulation

Risk based regulation has several key elements:

- Identifying the regulatory objectives, and the risks that regulated parties pose to these objectives.
- Developing a system for assessing and scoring risks, considering the extent of likely harm and the probability of it occurring. Systems can be quantitative or qualitative, depending on the approach preferred and the information available.
- Prioritising resources and effort based on the assessment of risks.
- Considering the appropriate intervention method. This may be separate from the risk assessment and based on a separate assessment of the regulated party's behaviours or needs. <sup>19</sup>

<sup>18</sup> Adapted from Ayres and Braithwaite model as referenced in the Productivity Commission Report, p. 56

<sup>19</sup> Jeroen van der Heijden and Graeme Hodge, 2020, Ten global trends in regulation: A future outlook. In: Helen Sullivan and Helen Dickson (Eds), *Palgrave Handbook of the Public Servant*. New York: Palgrave Macmillan (online).



# APPENDIX 3: THE HUMAN RIGHTS APPROACH

## THE HUMAN RIGHTS APPROACH

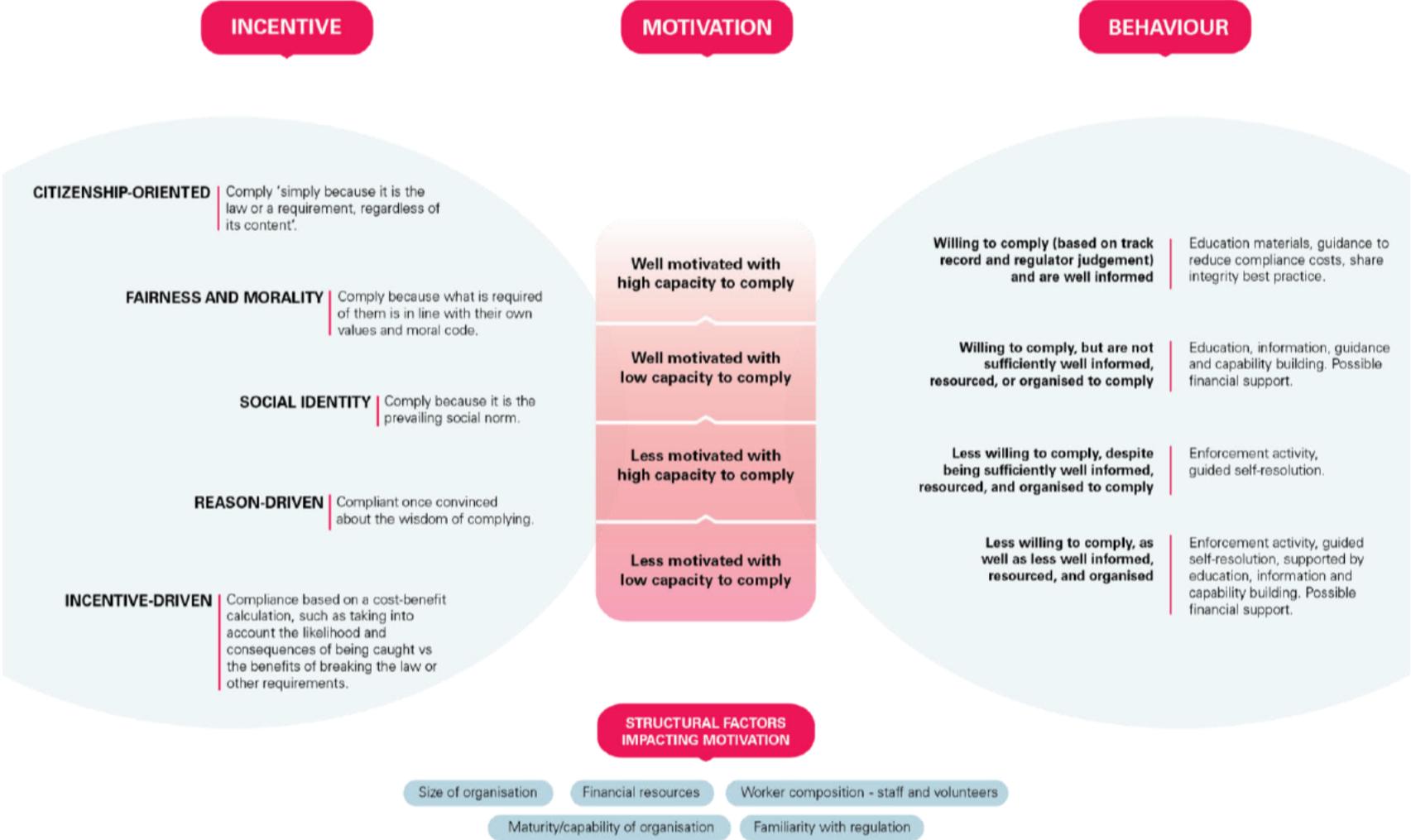
*adapted by the New Zealand Human Rights Commission from international models*

The human rights approach provides a robust guide to analysing complex human rights situations. The task is to work through the steps below to identify all the rights, to balance the rights if possible, and only then give priority to the rights of the most vulnerable. National Human Rights Institutions are advocates for the realisation of human rights for all.

<p>①</p> <p><b>DECISION MAKING</b></p> <p>Are decisions in-line with international human rights standards?</p>	<p>②</p> <p><b>PARTICIPATION</b></p> <p>Can those involved participate in decisions that affect them?</p>
<p>③</p> <p><b>NON-DISCRIMINATION</b></p> <p>Do those affected have the same rights and responsibilities as others?</p>	<p>④</p> <p><b>EMPOWERMENT</b></p> <p>Can those involved use their human rights to make change and have a say in decisions that affect them?</p>
<p>⑤</p> <p><b>ACCOUNTABILITY</b></p> <p>Can those affected complain about decisions that affect them?</p>	<p>⑥</p> <p><b>BALANCE</b></p> <p>Is there conflict between different rights? Try to balance these different rights so that everyone's rights are respected. Give priority to the rights of the most vulnerable.</p>



# APPENDIX 4: SUPPORTING SECTOR COMPLIANCE



Martin Jenkins adapted from Feldman, Yuval, Toward a Behaviorally Responsive Regulation, Empirical Findings and Normative Implications of the Five Models of Compliance Motivation (August 1, 2010). Handbook of Politics and Regulation 335 (David Levi Faur ed., Edward Elgar, 2011) and Black, Julia and Baldwin, Robert (2012) When risk-based regulation aims low: a strategic framework. Regulation and Governance



# APPENDIX 5: CASE STUDIES

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## ***Increasing the perception of independence: Independent Police Conduct Authority (IPCA)***

The IPCA illustrates the importance of the perception of independence for ensuring public trust when there is the potential for conflicts of interest in complaints management. It shows how an independent oversight body can ensure complaints are responded to robustly by providing supervision and intervening where necessary.

The IPCA is an independent oversight body that receives, investigates and conciliates complaints about NZ Police, informed by the Police Code of Conduct. It does not have the power to prosecute or bring disciplinary proceedings, but it does make findings and recommendations. When complaints are referred to the Police for investigation, the IPCA has oversight to ensure the investigation is undertaken properly.

Its independence from Government and the Police is prescribed in statute, with its members being appointed by the Governor-General on the recommendation of the House.

Before 1989, complaints about Police were investigated internally. However, following public concern about the lack of independence of complaints management from the Police, legislative, operational and structural changes were made, forming the current IPCA.

These changes included enhancing the investigative capacity of the function by increasing resources, addressing perceptions of a lack of independence by adding "Independent" to the name of the service, and expanding membership to engender confidence through representation of the wider community.

## ***Upholding standards through a system - Health complaints system***

The health complaints system illustrates how different entities across a system can together uphold standards and address breaches. The Medical Council NZ (MCNZ) provides sector input, the independent complainant advocacy service ensures complainants are supported, the Health Practitioners Disciplinary Tribunal (the Tribunal) makes determinations, and the Health and Disability Commission has an oversight function and upholds the Code for Consumers' Rights (the Code).

The MCNZ's role is protecting patients and the public by ensuring doctors are competent and fit to practice. It is responsible for registering doctors, setting standards, promoting learning, reviewing performance, and can suspend a practice. MCNZ is independent from the Government with its responsibilities and powers are defined as an 'authority' under the Health Practitioners Competence Assurance Act 2003. It has eleven members which are a mix of doctors and lay people. Nine members are appointed by the Minister of Health, and four are elected by other doctors.

The MCNZ works in conjunction with the independent Health and Disability Commissioner who promotes and protects the rights of consumers as set out in the Code. The Commissioner does this through facilitating the resolution of complaints, gathering information, investigating, providing education, and increasing awareness.

The Commissioner may seek resolution of complaints with help of the Nationwide Health and Disability Advocacy Service which offers free, independent, and confidential advice and support to resolve issues with health and disability services. This includes providing support, information on rights, and options for complaints.

The Commissioner may refer a complaint to MCNZ which may then refer the complaint to the Tribunal. The Tribunal hears and determines disciplinary proceedings brought against health practitioners and is comprised of lay persons and health practitioners appointed by the Minister of Health.



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**Statutorily independent function – Waka Kotahi NZTA**

Waka Kotahi exercises a regulatory function to promote a safe, efficient, and effective land transport system. It also has the functions of infrastructure deliverer and investor.

An independent review of Waka Kotahi found that its regulatory function was failing. This was due to an overshadowing by other functions, weak regulatory leadership and expertise, a lack of a clear regulatory strategy and approach, limited regulatory capability, resourcing and funding challenges, the absence of a regulatory culture, structural constraints, lack of accountability, and inadequate audit and risk management. The dispersed nature of the regulatory model also led to Waka Kotahi not being able to operate as an effective end-to-end regulator.

Part of the government’s response was establishing a Statutory Director of Land Transport to provide a greater level of accountability, independence and focus. More specifically, the establishment of the Director was intended to:

- Provide a single point of accountability for the regulatory function.
- Reduce the potential for the function to become diluted or lost over time.
- Provide greater clarity and transparency.
- Provide the public with increased confidence that a dedicated regulatory expert would be making key decisions.

The Board is responsible for strategic direction and focus including funding and resourcing. The Director cannot also be the CE of Waka Kotahi.

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# APPENDIX 6: ASSESSMENT OF OPTIONS AGAINST DESIGN OBJECTIVES AND PRINCIPLES

## Design Objectives

Design Objective	Option A	Option B
<b>Supports an athlete and participant centred approach, including athlete and participant voice, and facilitates trust by accommodating the varying needs of participants in the system</b>	<p>The requirement for Integrity Advisory Committee members to have experience in athlete/participant representation supports this objective.</p> <p>The Athlete Voice Mechanism, as currently proposed, is only for high-performance TAP athletes, and is not designed to provide direct support for athletes. However, other athletes/participants can access support through the SRCMS and other bodies such as OCC and HRC. Support for all athletes/participants is therefore available, but not through a single dedicated entity.</p> <p>Arrangements with DFSNZ and the Unit in two separate entities may create confusion for athletes and participants as to where to go to. However, this is mitigated by the SRCMS triage service which can refer on. There is also a clear distinction between the mandates of DFSNZ and the Integrity Unit.</p>	<p>The Athlete/Participant Support Unit supports this objective, with an independent and dedicated role to advance the interests of athletes/participants, provide specialist support. It can also provide legal aid which supports complainants who are less resourced. The extent to which it could provide this function would depend on its capacity and resourcing to manage a potentially high volume of matters, and a threshold will be important to establish.</p> <p>The continued use of the SRCMS (or version thereof) and its current approach is also supportive of this objective, along with the provision of a Disciplinary Panel available to all.</p> <p>The single complaint avenue or 'one-stop-shop' approach marginally increases simplicity and usability for the athlete and participant.</p> <p>The requirement for two Board members with recent athlete/participant background also supports this objective, although this cannot be guaranteed unless it provided for in statute.</p>
<p>Across both options, the extent to which the arrangements are athlete and participant centred will depend as much on the approach, processes, expertise and strategy as it will on the structures and functions, including approaches that are tikanga and trauma-informed. The independence of the SRCMS (or version thereof), Disciplinary Panel and Tribunal from the Unit or SIO is also important to foster trust.</p>		
<b>Provides a simple, accessible system designed for Aotearoa New Zealand that covers all dimensions of integrity across the play, active recreation and sport system.</b>	<p>As an operating model, the distribution of integrity functions across two separate agencies might appear complex. In reality, the agencies will be able to move matters between them, particularly through the SRCMS triaging system. Retaining the Integrity Unit within Sport NZ may also increase simplicity for organisations as that they only have to interact with one agency on most matters.</p> <p>The limited scope and function of the Athlete Voice Mechanism and the Disciplinary Panel risks reducing access bility, particularly for vulnerable participants and people with limited resources.</p>	<p>A single entity responsible for integrity issues provides a clear allocation of responsibility which supports simplicity and accessibility for participants.</p> <p>There is risk that the overlap in jurisdictional and functional boundaries between Sport NZ and the new agency, particularly regarding education and capability building, reduces simplicity and accessibility.</p> <p>The Athlete/Participant Support Unit has the potential to increase accessibility through its support function and its applicability to all participants.</p>
<b>Enables a more consistent interpretation and application of integrity standards across the system, meeting national and international obligations.</b>	<p>The location of the Unit within Sport NZ provides opportunities to ensure more consistency with respect to use of compliance levels (funding and partnership agreements) as these will be utilised based on interpretation and application of standards. However, there is a risk that even if the Unit is statutorily independent, the conflicting incentives of sport promotion and integrity impact consistency (or at least the appearance of consistency). The Unit may be unable to sufficiently undertake oversight to ensure Sport NZ is acting consistently with integrity standards in its role to promote sport.</p>	<p>The separation of the SIO from Sport NZ provides it with a greater oversight ability to ensure Sport NZ is acting consistently with integrity standards. However, this separation from Sport NZ carries the risk that the Agency and Sport NZ are not aligned and act inconsistently. In particular, there is a risk that the separation means the Agency is unable to ensure the leverage held by Sport NZ is used consistently with integrity objectives.</p>
<p>Across both options, the NCSI is a key factor in increasing consistency across the system as it provides a universal set of minimum standards. The triage function can increase consistency in both options by applying a consistent threshold and recommending consistent courses of action. Both options have been advanced on the basis that they are consistent with the Macolin Convention, assuming New Zealand becomes a signatory. Consistency of the options with other national and international obligations will need to be confirmed in the next stage of development, but on the face of it are not problematic. The formal relationship proposed with the Human Rights Commission will support compliance with international human rights standards.</p>		
<b>Achieves actual and perceived independence and independent decision-making which fosters the support, confidence and trust of participants in the system.</b>	<p><b>Measures providing actual independence of this option are the:</b></p> <ul style="list-style-type: none"> <li>• Explicit provision in legislation of the independence of the Unit (if provided)</li> <li>• Independent Advisory Committee, to which the Integrity Unit and Sport NZ CE are accountable</li> <li>• Separate funding appropriation for the Unit</li> <li>• Separate financial and non-financial performance measures to be reported by Sport NZ</li> <li>• Independent decision making of the SRCMS, DFSNZ, Disciplinary Panel and Tribunal</li> <li>• The organisational form of DFSNZ is likely to have greater actual and perceived independence from Ministerial direction</li> </ul> <p><b>Measures reducing the perceived independence of this option are:</b></p> <ul style="list-style-type: none"> <li>• Sport NZ has a statutory purpose to promote, encourage and support physical recreation and sport. Stakeholder feedback provided a strong view that the promotion of sport does not align and can conflict with ensuring integrity standards.</li> <li>• The appointment of Integrity Advisory committee members by the Sport NZ Board, with at least two members being allowed to sit on both the Sport NZ Board and the Integrity Advisory Committee which may give rise to conflicts of interest.</li> <li>• the Integrity Advisory Committee has no decision making power and can only make recommendations to the Sport NZ Board.</li> <li>• The disciplinary function would appear to be run by the SRCMS, which could lead to a perception that the SRCMS is not entirely neutral when facilitating resolution of disputes between parties</li> <li>• The cultural influence from other parts of Sport NZ could make the Integrity Unit less independent.</li> </ul>	<p><b>Measures increasing the actual and perceived independence of Option B are:</b></p> <ul style="list-style-type: none"> <li>• It is an independent entity with the sole purpose of ensuring integrity standards in the system,</li> <li>• It will be funded directly through a separate appropriation from Vote Sport</li> <li>• Board membership would be independent of Sport NZ and HPSNZ leadership, appointed by the Minister</li> <li>• The independent decision making of the triage and complaints function, and independence of the Disciplinary Panel and Tribunal is likely to have greater actual and perceived independence from Ministerial direction</li> </ul>



Across both options, the Sports Tribunal appropriately remains statutorily independent across both options as the appellant body.

**Provides a cost effective solution by protecting against and resolving integrity issues effectively and efficiently, and with an establishment cost proportionate to the scale of the issues it is seeking to resolve.**

Cost effectiveness is achieved in establishment primarily through the expanded use of existing agencies and amendments to existing Acts rather than new legislation. As Sport NZ currently undertakes similar activities and programmes requiring similar expertise (education and capability building in the sector), there is likely to be cost advantages to drawing on and leveraging this. There are also likely to be reduced overheads compared to Option B.

Cost effectiveness is provided through arrangements such as using Partners to work with their regional organisations and clubs, and the more limited scope of other mechanisms such as the Athlete Voice Mechanism and access to the Disciplinary Panel.

The option is not more cost effective if it is not trusted and used to resolve integrity issues.

The creation of a new entity (or substantial expansion of an existing entity) involves greater establishment cost, including drafting legislation. There is the potential for duplication of resource between Sport NZ and the SIO, potentially impacting on recruitment given the relevant expertise is likely to be limited in New Zealand.

An additional board, the broader scope of the Athlete/Participant Support Unit and the Disciplinary Panel and the relatively larger capability building and education function is also likely to require greater cost.

There may be efficiencies in providing all integrity functions to one agency (rather than split between DFSNZ and Sport NZ), particularly for triaging, managing complaints and education.

The option is ultimately more cost effective if the premise that it will be trusted and used to resolve integrity issues is realised.

Across both options, the accreditation system may impose a compliance burden on some NSOs and NOs.

## Design Principles

Design Principle	Option A	Option B
<p><b>Effective and efficient performance</b></p> <ul style="list-style-type: none"> <li>Provides levers to facilitate compliance with integrity standards</li> <li>Provides clear accountabilities, roles, processes and pathways which minimise duplication, informed by athlete and participant voice</li> <li>Supports and enables capability building, information sharing and collaboration across the system</li> </ul> <p>Provides for system stewardship to lead, monitor and evaluate the effectiveness of the system.</p>	<p>The location of the Unit within Sport NZ may provide an increase in alignment and collaboration, reducing duplication and allowing leverage off Sport NZ's functions more broadly. This is particularly in relation to:</p> <ul style="list-style-type: none"> <li>levers to facilitate compliance</li> <li>Sport NZ's capability building programmes</li> <li>coherence of system leadership.</li> </ul> <p>There is a risk that integrity accountabilities are lost within Sport NZ's broader functions, and clarity is reduced. This would be mitigated by a statutorily independent function and Independent Advisory Committee.</p>	<p>The use of a separate agency for Option B ensures a single and clear point of accountability and prioritisation of integrity as a mandate.</p> <p>Two separate entities with overlapping roles may reduce clarity and increase duplication in relation to:</p> <ul style="list-style-type: none"> <li>levers to facilitate compliance</li> <li>Sport NZ's capability building programmes</li> <li>coherence of system leadership</li> </ul> <p>Providing capability and education function directly to community organisations and clubs, and participant focused Athlete Participant Support Unit is an advantage for this option.</p> <p>The extent to which these potential disadvantages manifest in reality will depend on the nature of the relationship between the SIO and Sport NZ. These risks would be mitigated by a close and collaborative relationship, but clear distinctions of mandate and functions</p> <ul style="list-style-type: none"> <li>funding levers are yet to be determined at remain at an options stage and require greater consideration to ascertain their effectiveness</li> <li>the expanded remit of DFSNZ could dilute the effectiveness of its current functions, although this would be mitigated by the combined funding and structural arrangements to protect funding for DFSNZ.</li> <li>centralisation of integrity responsibilities provides for focused expertise and scale efficiencies.</li> </ul>
<p><b>Culture and values fit</b></p> <ul style="list-style-type: none"> <li>Enables a culture founded on fundamental human rights, including athlete rights and welfare and the rights of the child</li> <li>Provides for a te ao Māori approach, upholding the principles of Te Tiriti o Waitangi, and is inclusive of the diversity of contemporary Aotearoa New Zealand</li> </ul>	<ul style="list-style-type: none"> <li>The proposed Athlete Voice Mechanism provides representation for a select group of high performance athletes</li> <li>Sport NZ has an established bi-cultural approach which could be applied to the Integrity Advisory Committee</li> <li>Sport NZ will dominate the culture of the Integrity Unit. Sport NZ has a strong focus on integrity values which the Integrity Unit can leverage. However, it may be more challenging to ensure the focus is sustained due to the competing priorities of Sport NZ.</li> </ul> <p>Across both options, a te ao Māori approach and a culture of human rights is sought to be provided through the standards set out in the NCSI, complaints pathways, education and formal links to Human Rights Commission and the Office of the Children's Commissioner. Some Board members are required to have tikanga Māori expertise.</p> <p>Meeting these design principles is highly dependent on detailed design. To meet this design principle, future arrangements would need to provide governance and staff with appropriate representation, skills and experience, organisational expertise in child-safeguarding and culturally appropriate activities and processes that meet the interests and needs of Māori.</p>	<ul style="list-style-type: none"> <li>The Athlete/Participant Support Unit will have a focus on athlete rights and welfare</li> <li>The independence of Option B provides for a sustained focus on integrity matters, not compromised by conflicting priorities</li> </ul>
<p><b>Stakeholder focus</b></p> <ul style="list-style-type: none"> <li>Builds and supports the capability of all parties to understand and comply with required integrity standards and assists with capacity challenges</li> </ul>	<p>Housing the Unit within Sport NZ provides opportunities for effective capability building through leveraging and alignment with Sport NZ's existing programmes, as long as a sustained focus is maintained.</p> <p>The Athlete Voice Mechanism provides for high performance athlete engagement in the system, and pathways for support are available for other athletes/participants.</p>	<p>Option B is proposed to have direct engagement with the community for education and capability building.</p> <p>The Athlete Participant Support Unit supports athlete/participant engagement and engages in development of the NCSI and policy.</p>

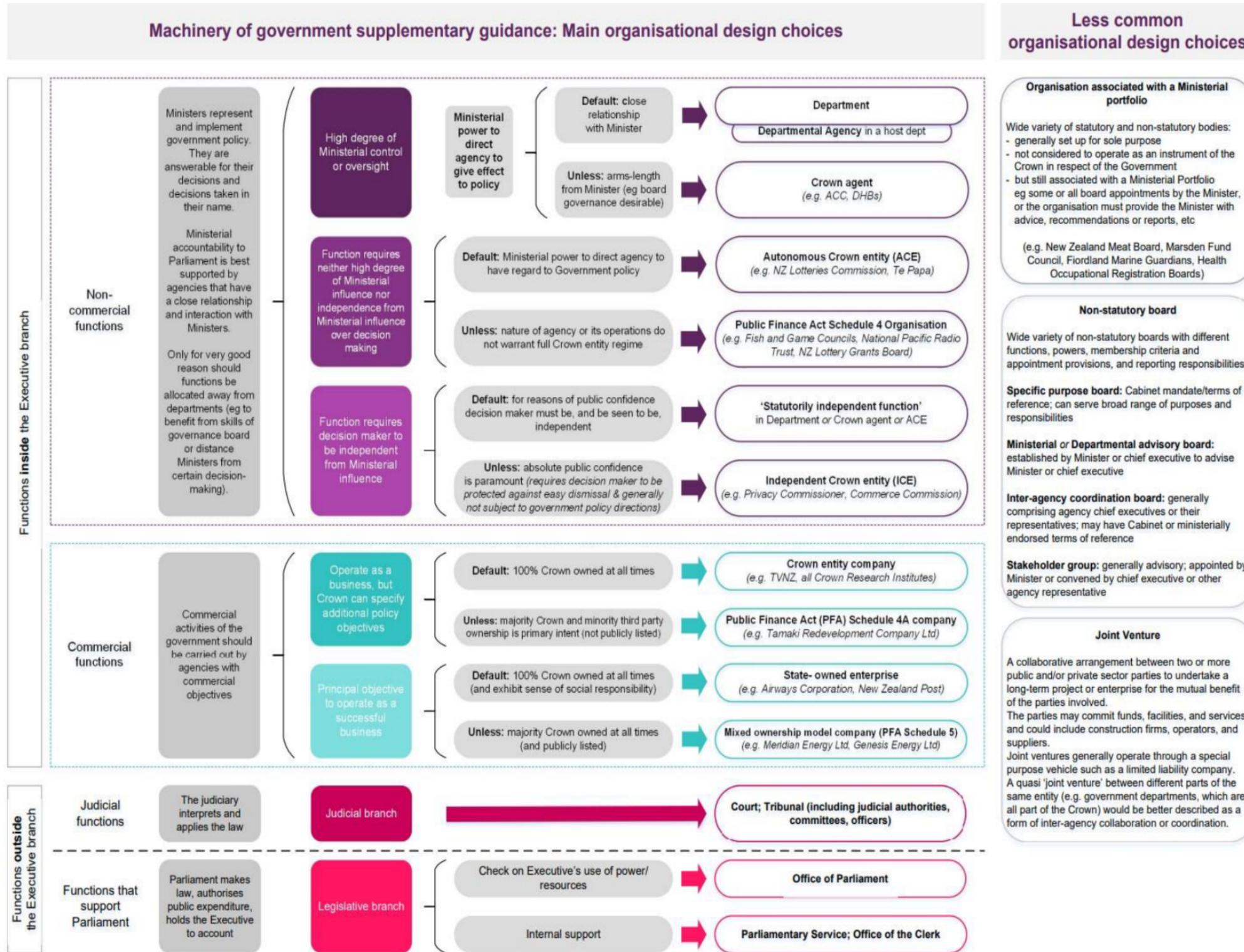


Design Principle	Option A	Option B
<ul style="list-style-type: none"> <li>Facilities, supports and empowers athlete and participant engagement in the system</li> <li>Provides appropriate recognition of the self-governance of private organisations, whilst maintaining standards and managing conflicts of interest.</li> </ul>	<p>In both options, there is a risk that the sovereignty and self-governance of organisations is impacted by requirements from the Unit or Agency, which are stronger for Option B. This needs to be weighed against the requirement to achieve consistent integrity standards. Self-governance is also retained for accredited organisations. The centralised management of integrity may be too removed from the particularities of specific sector cultures. Athlete and participant engagement is facilitated, supported and empowered by the SRCMS in both options.</p>	
<p><b>Implementable and adaptable including:</b></p> <ul style="list-style-type: none"> <li><b>Manageable scale of change</b> to be fully established within five years</li> <li>Potential to be <b>resourced and funded</b></li> </ul> <p><b>Future-proofed</b> to adapt over a longer time horizon without requiring organisational re-design</p>	<p>This option requires a less legislative change and makes use of existing institutions.</p> <p>Structural changes within Sport NZ are likely to be easier to undertake than the establishment of a new legislated entity in Option B, but the culture change and building trust may take longer.</p> <p>The lower cost for both establishment and operations makes it easier to be resourced and funded.</p> <p>If trust is not built through these arrangements, re-design will be required.</p>	<p>This option is a greater scale of change that is more disruptive and likely to be more expensive to establish.</p> <p>Once established, the agency can adapt over time without being re-designed. However, if the new arrangements are not effective, it will be hard to disestablish.</p> <p>The potential for this option to be resourced and funded is dependent on the appetite of Cabinet and Parliament.</p>
<p><b>The limited resource, capability and capacity of NOs, ROs, clubs and other actors in the sports sector implies a long establishment timeframe to provide time to achieve compliance. Legislative change may be required to implement formal arrangements with the OCC and HRC.</b></p>		



# APPENDIX 7: MOG GUIDANCE ON ORGANISATIONAL FORM

The State Services Commission is currently updating its machinery of government guidance. This diagram provides supplementary information and should be read in conjunction with the existing document <http://www.ssc.govt.nz/reviewing-mog>





# APPENDIX 8: IMPLEMENTATION RISKS AND MITIGATIONS

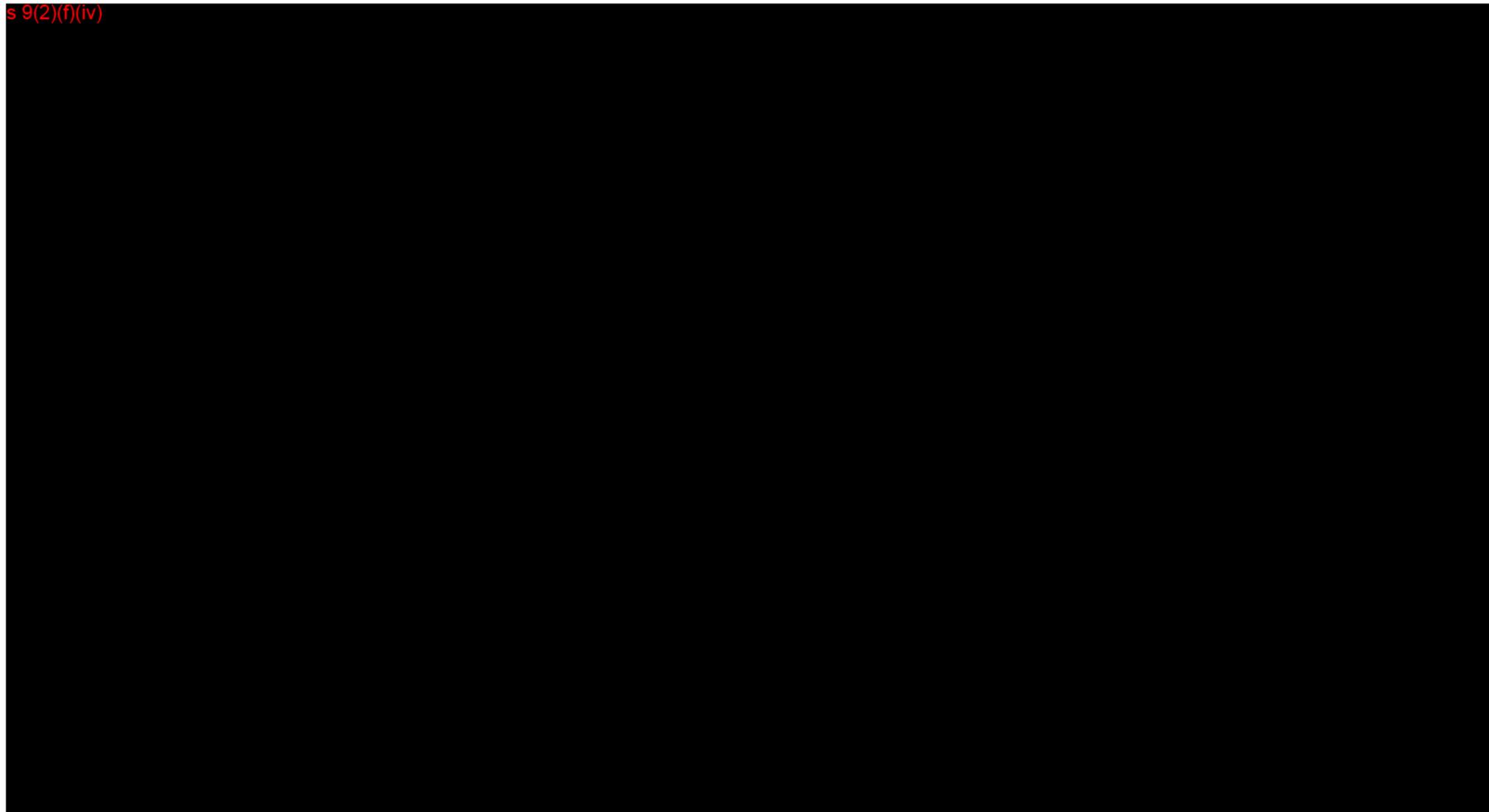
Table 12: Risks and mitigations

Risk	Option A	Option B
<p><b>The arrangements are not trusted or used by participants.</b> As the regulator will rely on complaints being made to identify and address integrity issues, its success heavily depends on the regulated parties' willingness to engage with it. Across both options, this risk is mitigated by use of independent functions.</p>	<p>The perceived lack of independence of Option A creates greater risk that the Unit is not trusted or used.</p> <p>This could be mitigated by providing the Unit with statutory independence, and a sustained focus on integrity and on transparent and impartial decision making.</p>	<p>The actual and perceived independence of Option B reduces the risk that it is not trusted. However, as a new institution, it will take time to build its reputation and capability, and early successes will be important.</p>
<p><b>Play, active recreation and sports organisations do not have the resource, capability or desire to comply with new regulatory requirements.</b> There is a risk that some organisations may be unwilling or unable to comply with regulatory requirements, meaning that the regulator is unable to drive improvements in the system through the levers it has. This may arise as organisations generally have limited resource and may see requirements as unnecessary or unworkable.</p>	<p>Mitigating factors for Option A are the relative ease and potential alignment with other Sport NZ capability building and education programmes, and the levers of partnership agreements and provision of organisational recognition.</p> <p>Mitigations across both options could include making the NCIS mandatory unless accredited under a system that meets the standards of the code, providing funding and assistance to comply, and a focus on capability building and working collaboratively with the sector, noting that enforcement will be required in some circumstances.</p>	<p>Mitigating factors for Option B are slightly larger capability building and education function, and direct reach beyond Sport NZ Partners which could be used to motivate organisations to comply</p>
<p><b>The regulator is not sufficiently resourced to carry out its role.</b> There is a risk the regulator will not have sufficient funding and/or personnel capacity and capability to effectively carry out its key functions, meaning its objective is not able to be achieved. There is limited information on the scale of issues, and it could also be overwhelmed with large numbers of complaints.</p>	<p>Mitigations include a separate appropriation from Vote Sport and Recreation, and the relative ease of drawing on Sport NZ's wider resources. Mitigations also include ring-fencing access to some mechanisms such as the Athlete Voice and the Disciplinary Panel.</p> <p>Mitigations across both options are to create arrangements appropriate for a country of our size and apply a risk-based approach which ensures that the regulator targets efforts towards areas of greatest harm.</p>	<p>This risk is greater for Option B given it is more costly to establish and operate, and in a resource constrained environment where integrity functions may be dominated by the well-established anti-doping funding. Mitigations include a separate appropriation from Vote Sport and Recreation and setting thresholds to manage scale of access to the Participants Commission and the Disciplinary Panel.</p>
<p><b>The Unit/Agency does not have the ability to enforce compliance with regulatory requirements.</b></p>	<p>Compliance levers have yet to be determined but appear to be the same across both options. In both options, the risk is that the regulator is unable to utilise the leverage of funding and recognition by Sport NZ for enforcement of integrity standards. This can be mitigated in the design phase by formal agreements, potentially through provision in legislation. A wide range of additional enforcement tools such as notices and enforceable undertakings should be provided for in legislation.</p>	
<p><b>The regulator does not have a sustained focus on integrity due to competing priorities.</b></p>	<p>Providing the Unit with statutory independence and a separate funding allocation would mitigate this risk.</p>	<p>There is a risk that Option B would be dominated by the established anti-doping function. This could be mitigated by leadership, culture and structural arrangements within the SIO.</p>



# APPENDIX 9: FINANCIAL ANALYSIS

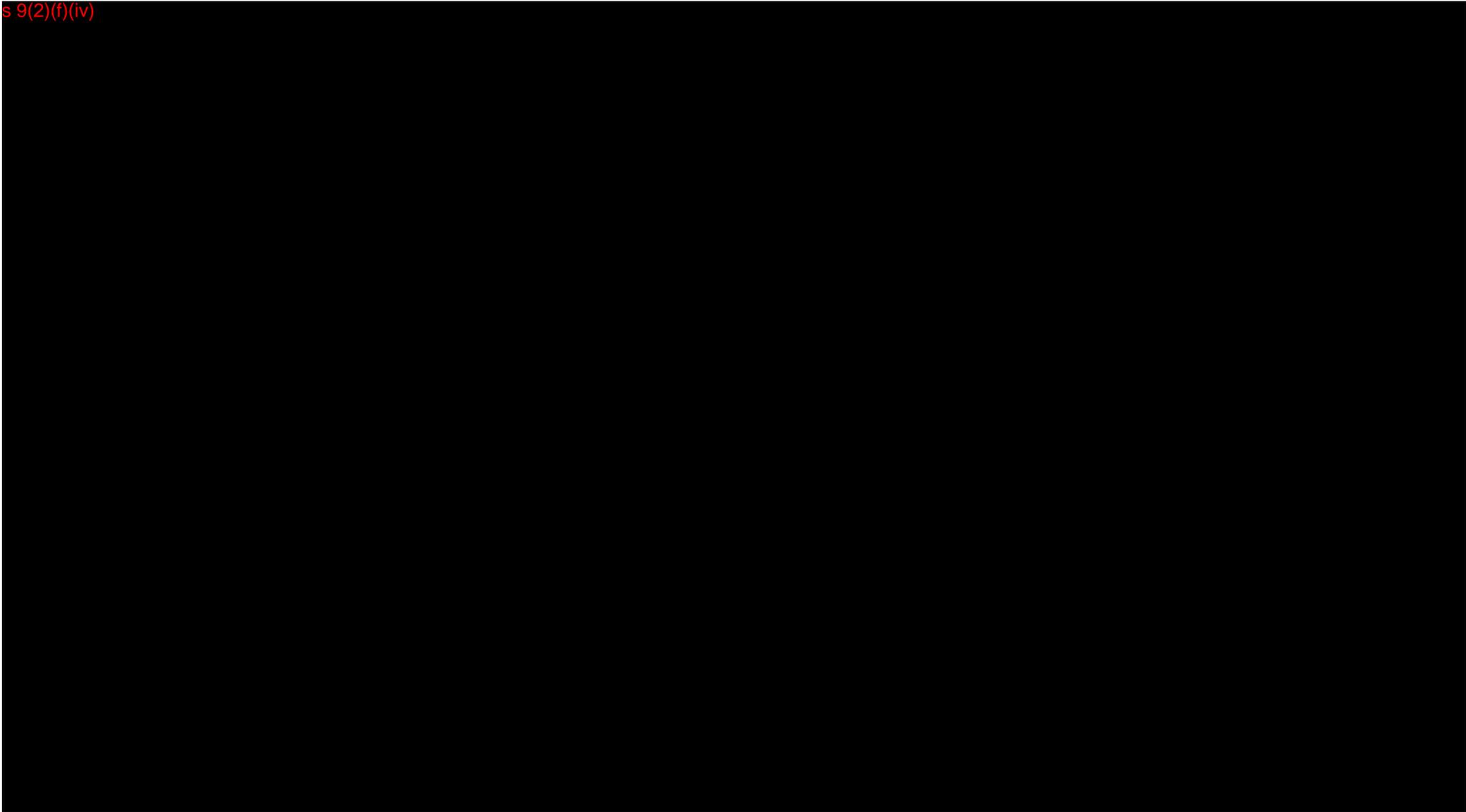
s 9(2)(f)(iv)



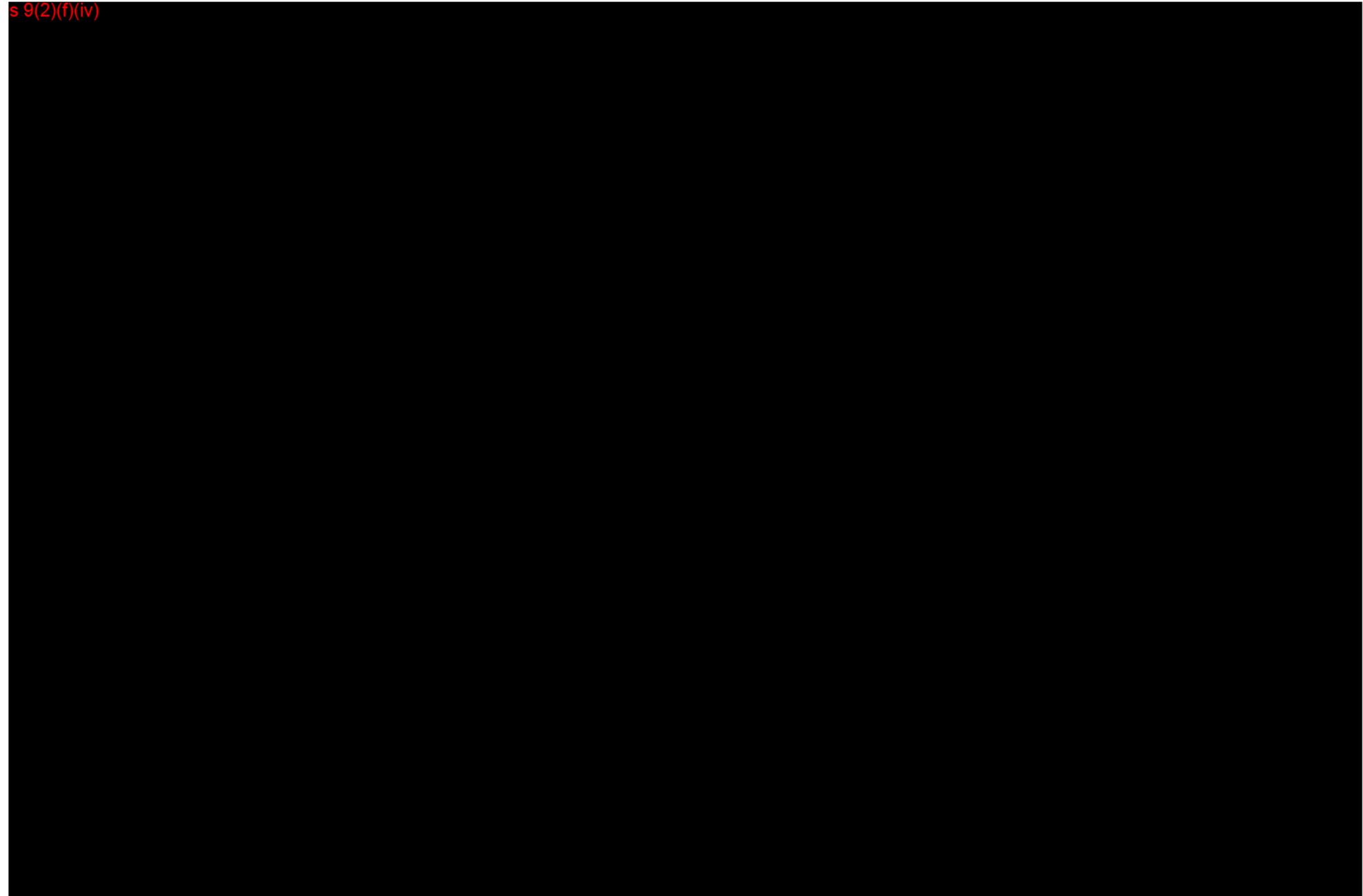
## Modelling assumptions

s 9(2)(f)(iv)





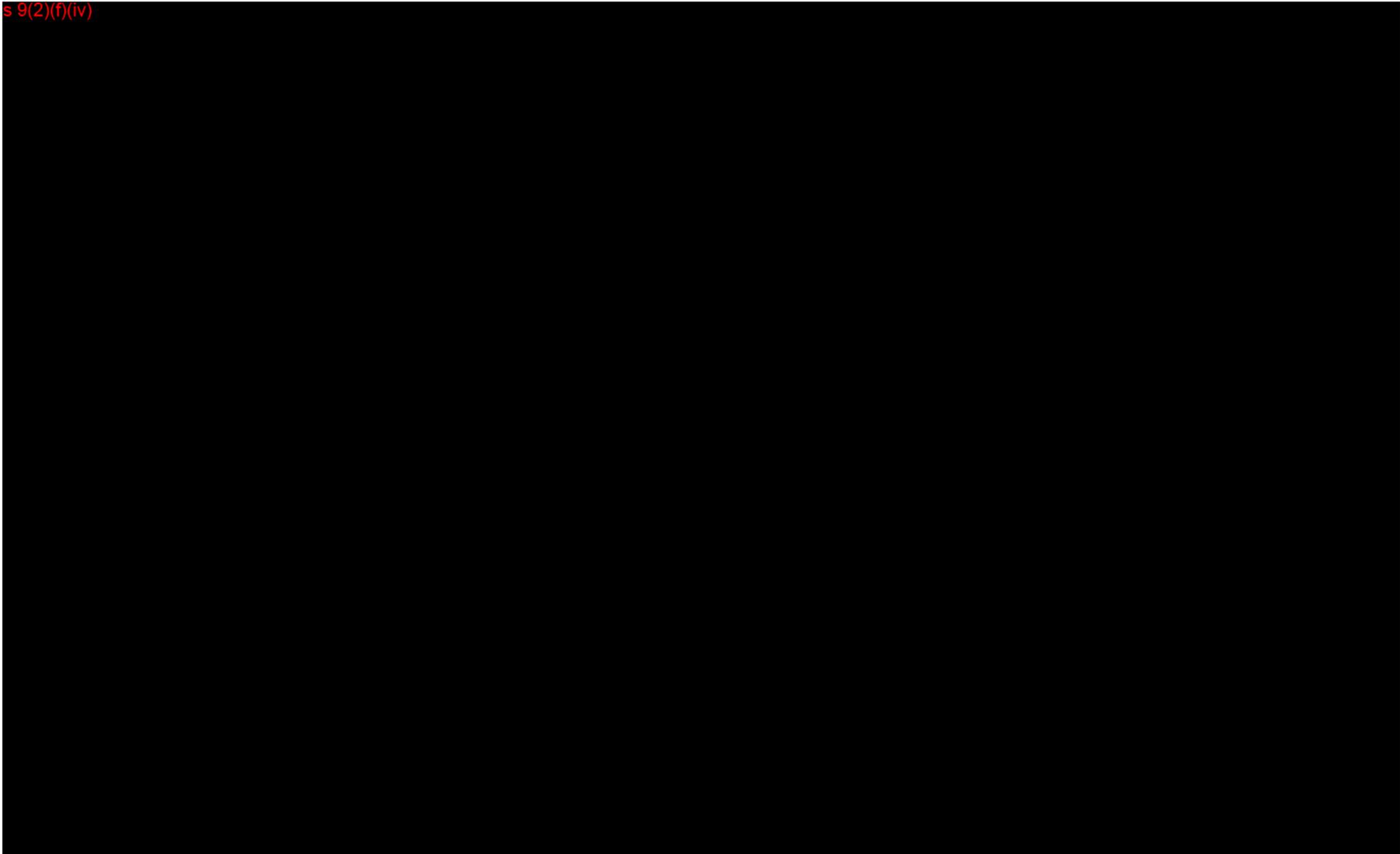
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