



**INDEPENDENT REVIEW OF
CYCLING NEW ZEALAND
HIGH PERFORMANCE
PROGRAMME**

**Michael Heron QC
12 October 2018**

He aha te mea nui o te ao. He tāngata, he tāngata, he tāngata

What is the most important thing in the world? It is people, it is people, it is people.

Sweep the sheds

To reinforce the importance of humility and team culture, the All Blacks (team and coaches) are expected to tidy the changing rooms before the team leaves.

ACKNOWLEDGEMENTS

As part of this Review I spoke to over 70 people involved in the Programme. Many of them were athletes and coaches who made time for me in their demanding schedules. For example many Athletes agreed to meet me on a Sunday immediately before they departed New Zealand for overseas training.

I would particularly like to acknowledge the support given to me by current and former personnel of High Performance Sport New Zealand (**HPSNZ**) and Cycling New Zealand (**CNZ**). I was impressed by their passion and commitment to the High Performance Programme of CNZ even after they were no longer connected to it. Any criticisms levelled at those organisations in this Review do not detract from the quality and commitment of the individuals involved.

I am privileged to have been given the opportunity to conduct this Review. Given the subject matter, I was dealing with a wide array of private and sensitive issues that deeply impacted those affected.

During the Review I was provided with a vast amount of information, both from documents and interviews. It is not possible or helpful in this review to reflect each individual circumstance or situation. I have endeavoured to synthesise the information and expertise provided to me in a format that will be useful.

To everyone that took part, I sincerely thank you for your involvement, both from myself and on behalf of those who may benefit from your contribution.



Michael Heron QC

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EXECUTIVE SUMMARY

1. The allegations which emerged in the media recently are well-founded. They reflect a culture in the Programme of a lack of consequences for poor behaviour, a lack of accountability and sub-optimal leadership.
2. Responsibility for the poor behaviour lies with a small number of individuals. Primary responsibility for the culture, lack of accountability and leadership lies with CNZ. Responsibility for aspects of these failures also lies with HPSNZ.
3. Underlying this situation 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.

Cycling NZ

4. I am satisfied that the allegations in the Terms relating to the Coach are true.¹ The allegations as they relate to the Programme are true in part and not in others. Specifically:
 - a. I consider that there have been instances of bullying (or conduct which is otherwise prohibited by the CNZ Code of Conduct) in the Programme.
 - b. I am satisfied that an inappropriate personal relationship existed between the Coach and a female athlete during the period under review. The relationship was not disclosed to CNZ.
 - c. There was not a "drinking culture" in the Programme save for a small group of individuals (including the Coach). Drinking to excess was not encouraged or tolerated outside that group.
 - d. The culture in the Programme was dysfunctional during the review period although it appears to have improved significantly in 2018. It was not consistent with what was required for high performance.

¹ In fairness, I note the Coach rejects this and states this report is grossly inaccurate in many respects and is based on unreliable and inaccurate evidence.

- e. There was a lack of accountability and effective leadership in the Programme. The reasons for this are a combination of many factors, in particular:
 - o The particular personality of the Coach in question;
 - o The status and success of the Coach within the Programme;
 - o The culture within the Programme - a reluctance to surface issues, which in turn led to a lack of reliable evidence;
 - o A lack of human resources capability within CNZ and insufficient use of external assistance;
 - o The workload of the CEO, including taking on the interim HPD role and the role of General Manager of the Home of Cycling (Velodrome trust);
 - o A perception of an "old boys club" whereby relationships amongst coaches and consultants appeared to prevent them holding others to account for poor behaviour; and
 - o The time spent offshore by members of the Programme for international training and racing, reducing the visibility of poor behaviour to CNZ leadership.

- f. While CNZ did respond to some of the issues, the CNZ response was ineffective and inadequate. Ultimate responsibility was with the CEO and the Board.

- g. Although the policies and procedures of CNZ were not adequate to protect those involved, the primary issue was the reluctance to raise concerns and a lack of accountability if they were raised.

HPSNZ

- 5. The Board of HPSNZ did not have sufficient visibility of the situation to have influenced it. However, HPSNZ as a whole knew enough of the circumstances before May 2018 to have done more to assist. HPSNZ should have done more to ensure that the issues it was aware of were being adequately dealt with. HPSNZ did provide support to CNZ, but there was too much trust in the ability of CNZ to resolve the issues.

- 6. The HPSNZ Rio debrief process was unduly complex and not coherent. The collective information revealed serious problems with the Programme which the HPSNZ Board and leadership ought to have been aware of.

7. The leak of confidential information to the media came from a person who had access to the house of the Coach. The confidential information was provided to the Coach in error by an HPSNZ employee. CNZ was not informed or aware of this.
8. HPSNZ ought to take some responsibility for the cultural and leadership issues identified in this review. There was insufficient collation and escalation of information known to HPSNZ and a failure to reflect on whether the issues it was aware of were being adequately dealt with.
9. HPSNZ has some responsibility for not ensuring CNZ had (as part of the sustainability of its Programme) a practical, operable and confidential method to escalate issues affecting athlete (or participant) welfare. Complaints and issues as a result were not dealt with appropriately.

RECOMMENDATIONS

1. Sport NZ, CNZ and HPSNZ consider and address current issues relating to welfare of high-performance athletes, coaches and support staff. The current reviews in relation to wider athlete welfare and integrity should be carefully considered.
2. The rules, policies and codes of conduct of CNZ ought to be reviewed and where necessary augmented and improved to comprehensively deal with issues relating to the conduct and welfare identified in this review.
3. HPSNZ and Sport NZ develop an organisational athlete-safeguarding policy consistent with good international practice which can be implemented by NSO's such as CNZ.
4. CNZ implement such a policy with appropriate adaptation for its own requirements and circumstances. Such a policy must meet good international practice and be practical, operable and well understood.
5. Sport NZ and HPSNZ should consider further the relationship between them and with NSO's and whether it is optimal to ensure an NSO's primary accountability for athlete welfare can be met. For example, consideration as to whether the existing funding and investment model gives sufficient priority to athlete welfare and sufficient regard to the importance of development, welfare and NSO capability.
6. HPSNZ and Sport NZ to consider whether wider measures to protect welfare are required including (i) whether an independent welfare and conduct body is required; (ii) whether player advocates or bodies should be provided with more support or assistance, specifically in NSO's in which they do not operate; and (iii) whether changes in the relationship between HPSNZ and NSO's be made to ensure that welfare gets sufficient priority.
7. The policies and practices of CNZ and HPSNZ in respect to coach-athlete intimate relationships be reviewed and (if necessary) clarified. Coaches, athletes and other personnel should be educated and reminded of the NZ position.
8. CNZ review and reaffirm its policy on the use of alcohol whilst on CNZ business and educate staff as necessary.
9. HPSNZ and CNZ review and clarify the policy and process in respect to pinnacle event debriefs and ensure that they occur in a coherent, logical and timely fashion. HPSNZ

ensure that those involved collaborate to produce relevant, complete and timely debrief material.

10. Cycling NZ review its recruitment approach and the credentials of its coaching team to ensure that these are fit for purpose for the current coaching environment.
11. Cycling NZ and HPSNZ consider whether the welfare consequences of centralisation are fully considered and incorporated into the athlete and participant welfare regime.

INTRODUCTION & PROCESS

- 1.1 In late May 2018, the news media began reporting on the culture of the CNZ High Performance Programme (the "Programme") and the conduct of former sprint coach Anthony Peden ("the Coach").
- 1.2 Allegations relating to bullying, inappropriate behaviour, inappropriate personal relationships, a dysfunctional culture, a drinking culture and a lack of accountability were published. There was also a focus on the disclosure of confidential information obtained as a result of a debrief following the 2016 Rio Olympic Games.
- 1.3 As a result of this, HPSNZ announced this Review and (in conjunction with CNZ) approved Terms of Reference ("Terms") dated 6 June 2018.
- 1.4 In summary, the Terms tasked me with determining whether the allegations were true and (if so) whether the response to them was adequate. I was also asked to consider and make recommendations as to improvements. I have endeavoured to cover the detail required in the Terms but where appropriate have combined and condensed responses to avoid overlap or excessive detail. I was primarily concerned with the period from the start of 2016 until the middle of 2018.
- 1.5 I was assisted in the Review by Steven Bird.² HPSNZ and CNZ also provided administrative support as requested.
- 1.6 Individuals with insight into any of the Terms of Reference were encouraged to contact me and many did. HPSNZ provided my contact details to staff and created a private email account³ that was monitored throughout the Review. Many people took the opportunity to reach me via this account or by direct contact.
- 1.7 The review process took place from mid-June to early September 2018.⁴ I produced a draft report dated 4 September 2018 which was made available to those who might be affected by the findings in it to ensure natural justice requirements were complied with. It was made available through a secure virtual data room with two-factor authentication.⁵ 52 people with direct interest in the review were provided access to the draft for more than two weeks. 51 people reviewed the draft. Each of them were able to provide me with comments and feedback and many did. The final report reflects the substance of those comments and feedback where relevant and appropriate.

² Employed barrister in my chambers.

³ michael.heron@hpsnz.org.nz and reviewinput@hpsnz.org.nz

⁴ The original completion of 31 August was extended by agreement with HPSNZ.

⁵ <https://www.idealsvdr.com/>

Document Review

1.8 A Dropbox was setup with relevant information requested by me uploaded into it. This comprised internal reports, emails, Board minutes of CNZ and HPSNZ, and organisational documents of both CNZ and HPSNZ.⁶ I reviewed the legal and policy documents relating to the matters in the Terms, including constitutional documents, individual contractor and fixed term employment agreements, relevant case law, codes of conduct, and other relevant policies such as those relating to misconduct, harassment and bullying and athlete performance support.

Interviews

1.9 The following applied to all interviews:

- They were voluntary. No one was required to speak to me. I interviewed people as specified in the Terms.
- Interviews either took place at my chambers, the Avantidrome in Cambridge, BNZ Partners Offices in Cambridge, via an Audio-Visual meeting or in a few instances over the phone when this was the most convenient option.
- On occasions HPSNZ provided administrative support to assist with scheduling and to obtain current contact details where these were not available.⁷
- They were not recorded except for two cases where the interviewee took a recording with my permission.
- Notes were taken of what was said at the interviews.
- Interviewees were assigned a number so that the notes did not immediately reveal the identity of the interviewee.

1.10 In contacting some interviewees we relied on assistance from each of CNZ, HPSNZ and people we interviewed. CNZ contacted its staff on 13 June informing them of the Review, and gave them the opportunity to contact me via one of the review email addresses. This message was reiterated by the CEO on 30 July.

1.11 HPSNZ contacted its present and some former staff members to inquire if they wished to participate.

1.12 The Review team also contacted athletes (both past and present) and former staff members at the request of interviewees and HPSNZ. Most people that were

⁶ I have relied on the completeness of information provided by HPSNZ and CNZ.

⁷ Neither HPSNZ or CNZ had any involvement in or access to the content of interviews.

contacted responded and an interview was undertaken. Others did not respond or declined our request to be interviewed.

1.13 The Coach and the athlete of central relevance to the relationship issue declined to be interviewed by me. The Coach provided a written statement. Both the Coach and athlete reviewed and provided written feedback on the draft report. Their feedback was considered and reflected where relevant. The Coach through his lawyer insisted that his response to the draft report be included in full and verbatim. I do so at **Appendix E**.

1.14 Outside of the significant expertise of HPSNZ and CNZ, I discussed the general issues raised in this inquiry with Kathryn Beck⁸, Don Mackinnon⁹, Rob Nichol¹⁰, Roger Mortimer¹¹ and Stephen Cottrell.¹² These individuals have significant expertise in employment law and culture and welfare in High Performance environments.

1.15 I also considered a range of reports and policy documents including:

- a) Report of the Independent Review Panel into the Climate and Culture of the World Class Programme in British Cycling 2017;
- b) The International Olympic Committee's Toolkit and Guidelines for safeguarding athletes from harassment and abuse in sport;
- c) USA Center for Safe Sport materials and Code of Conduct;
- d) Australian Sports Commission Guidance and Policy Template for National Sporting Organisations;
- e) UK Duty of Care in Sport Independent Report to Government 2017;
- f) USA Gymnastics report on Proposed Policy and Procedural Changes for the Protection of Young Athletes 2017;
- g) WorkSafe New Zealand's guidance on harassment and bullying; and
- h) Sport NZ's Safe Sport for Children policy.

⁸ Partner of SBM Legal, and President of the New Zealand Law Society.

⁹ Partner of SBM Legal.

¹⁰ CEO of NZ Rugby Players Association.

¹¹ General Manager at New Zealand Athletes Federation.

¹² Partner of CottSport and Reviewer for Sport New Zealand's inquiry into the rights and welfare of elite athletes.

ARE THE ALLEGATIONS TRUE?

Terms 1.7, 2.1, 2.3, 2.4

Summary

2.1 In broad summary, I am satisfied that the allegations relating to the Coach are true. The allegations as they relate to the Programme are true in part and not in others. I outline my reasons below.

Lead up to the Rio Olympics 2016 – Bordeaux

- 2.2 Whilst I received information suggesting inappropriate behaviour earlier than 2016, the Terms (and accordingly the information provided) primarily concentrated on events in 2016 and following.
- 2.3 One incident stood out in the mind of many of those interviewed. It was an incident which in hindsight was a significant one, in terms of what occurred, how it was dealt with and what it signalled in terms of the culture of the Programme.
- 2.4 In the immediate build-up to the Rio Olympics, much of the cycling team was located in Bordeaux, France. On 17 July 2016, the sprint team had a rest day. Athletes and staff went into the town for the day. Athletes were expected to be back at the hotel by 10pm. The Coach and his assistant coach went to a restaurant for a meal. Two athletes (one male, one female) who had rode into town joined them. They had a drink together. The male athlete left to return to the hotel around 8pm and the assistant coach left later in the evening after more alcohol was consumed. The Coach and the female athlete remained in town, drinking alone. The opening ceremony of the Rio Olympics was less than three weeks away (5 August 2016).
- 2.5 Back at the team hotel another athlete became anxious as to the whereabouts of her roommate and contacted the team manager.¹³ Her roommate had explained to her she was going into town to Skype her boyfriend. For that reason, the athlete also contacted the boyfriend – who was in another country but also in the CNZ HPP. The team manager tried to ascertain the whereabouts of the athlete by texting the Coach and assistant coach.
- 2.6 Just before 11pm, the assistant coach responded with a text saying they had seen the missing athlete and she was on her way home. Despite this, the athlete had still not returned to the hotel by 1:15 am and her roommate again notified the manager. At this point the assistant coach was woken, rooms were checked and the hotel

¹³ Via text messages commencing at 21:23.

reception was asked to call local hospitals as there were concerns that the female athlete had been knocked off her bike riding back to the hotel.

- 2.7 At approximately 2:30 am, just as a small group was set to leave the hotel to find the missing athlete, the Coach and the athlete returned in a taxi to the team hotel. They were clearly intoxicated. A witness at the hotel describes seeing "an intimate moment between them".¹⁴ The female athlete was later described as vomiting for the rest of the night.
- 2.8 The head coach conducted a review of the incident and on 20 July outlined his plan of action to the Coach. That involved apologies from the two involved, an alcohol ban for the remainder of the campaign on the Coach and cancellation of the Coach's planned trip to Switzerland. On 21 July the head coach recommended to the High Performance Director (HPD) that he "parks any further action until post Olympics".
- 2.9 The HPD travelled to Bordeaux and conducted an investigation into the incident. He determined that a written warning was appropriate together with formal medical and professional support for the Coach to deal with the issues which were said to be behind the incident. These were issues related to the Coach arising from an accident in 2015 and subsequent health concerns.¹⁵ The HPD reported this to the CEO of CNZ.¹⁶
- 2.10 The team manager (involved on the night in question) expressed her concerns in the material which went to the HPD and CEO that she felt an athlete had been bullied by other squad members to protect the Coach. When the HPD interviewed the athlete it was evident to him that this had occurred and that she was telling him the "party line". The athlete reported to me that she felt pressured into lying by other athletes. The "party line" as reported to the HPD by the Coach and female athlete concerned was to underplay the incident and the impact of alcohol. The female athlete later admitted lying about the incident to her boyfriend.¹⁷
- 2.11 The team manager again expressed her concern to the HPD that if the incident was to go "unacted on" (her words) it would continue to be a risk for the team. The HPD stated to the team manager at the time that he was "*completely gutted by [the Coach's] actions and the disrespect it shows to so many people in so many parts of the programme.*"

¹⁴ The Head Coach who was also present did not observe this.

¹⁵ I have not detailed these matters in order to preserve confidentiality and privacy. In my view these were very important background features and an opportunity to support the Coach in this area was missed.

¹⁶

¹⁷ The athlete concerned strongly denied any bullying and stated she politely asked her roommate not to talk about her personal business on one occasion only (and therefore she argued it could not be bullying). On balance, I prefer the evidence of the others involved. It is more logical, consistent and credible.

- 2.12 The ripple effects of the incident were significant, again with the benefit of hindsight. Many of the athletes were upset that team members would be acting in such a manner within weeks of the Olympic games. Athletes were understandably worried about what impact this would have on their performance. Coaches and management, already under a great deal of stress, had a further issue to deal with. Both through direct pressure and omission of accurate details, however, the incident was downplayed.
- 2.13 Not only was a young female athlete pressured to lie, the team manager was later put under pressure by the Coach not to speak about the incident. The boyfriend of the athlete received text messages to similar effect from another athlete which were at least troubling and unwelcome. The text messages sent to the team manager by the Coach were aggressive and in one case threatening. She was deeply affected by the experience, feeling extremely insecure, nervous and uneasy about the environment.¹⁸
- 2.14 As stated, one of the immediate responses was to impose an alcohol ban on the Coach. Despite this, at least two interviewees reported to me that the Coach was seen drinking in the bar of the team hotel in Lisbon only a few days later and again at the Rio Olympics. This information was reported to the Head Coach and the HPD, and was shared with the CEO later in the year.
- 2.15 The events of Rio for the cycling team were described as "the perfect storm". The world champion men's sprint team were narrowly beaten into silver despite recording a record time. Individual and team performances were below expectations, both on the road and the track.¹⁹ Only one medal was obtained against a target of five, with three fourth places.
- 2.16 Two coaches suffered acute illness. The Head Coach was in hospital for several days during competition due to illness. The other coach was hospitalised post competition, where alcohol appeared to exacerbate an existing illness. There was also a breakdown in an athlete-coach relationship leading to stress, conflict and controversy, including negative media coverage. There was a minor but potentially risky and embarrassing incident on the Rio beach front (again alcohol and/or medication involved). On that occasion, the Coach was instrumental in resolving the incident.
- 2.17 Coaches were exhausted, stressed, unwell and the team underperformed (other than the men's sprint team). The performance must be put in context, however, as the

¹⁸ The text messages were not shown to the CEO and the team manager declined his invitations to make a formal complaint against the Coach. The team manager explained that she felt unable to do so because of a lack of support and assistance from the HPD and CEO – she felt they were not able to protect her.

¹⁹ Results can be found at <https://www.olympic.org/rio-2016/cycling-track>

Great Britain team performed outstandingly riding a significant number of world records.²⁰

2.18 The Chair and CEO of Cycling NZ were present at the Games. It was obvious to them that there were serious issues to be confronted, not simply because of the performance of the team but at a deeper cultural level in the Programme.

2.19 Upon return from Rio, the CEO received a thorough debrief from the HPD of the events in Bordeaux and other incidents at the games themselves. He decided to "slow down" in relation to the proposed disciplinary action. He stated:

Given the seriousness of the incidents, as the CEO I believe all further decisions and actions on disciplinary matters have to ultimately sit with me.

.... I have made the decision that I will take a full and active part in all facets of the Rio debrief...²¹

2.20 The CEO alerted the former Chair who said his response was "very appropriate".

2.21 The Chair noted that:

Suspect for the coaches concerned, written warnings and potential variations to their contracts are required.

2.22 The former Chair went on to note possible cultural issues behind the behaviours including a culture of entitlement, superiority, and chauvinism, which may be present within the Programme to an unhealthy level.

2.23 In discussions with HPSNZ about the Bordeaux incident at the time, it was made clear by the CEO to the responsible HPSNZ consultant that the CEO had the matter in hand. In my view, the CEO had far more pressing matters to deal with and in hindsight it was unwise not to get further assistance to help deal appropriately with the incident.

2.24 Ultimately, the CEO gave the Coach a formal verbal warning on 9 September 2016. He described this to me as a serious step.²² As will be seen below, this warning does not appear to have impacted on the Coach's behaviour. Many involved in the Programme described incidents of excessive drinking by the Coach on dates following the warning. As I note above, there seemed to be a missed opportunity to ensure the Coach got support to deal with what may have been underlying health issues.

²⁰ The irony of that should not be lost when considering the UK Cycling Independent Review was occurring at the time of Rio (refer discussion below).

²¹ The CEO also explained to me his decision was also motivated by the stress he believed both the Coach and HPD were under and their now dysfunctional relationship.

²² The CEO explained that he gave the Coach the benefit of the doubt because of the stress and other issues which the Coach explained contributed to the incident. Another coach was given the same type of warning for his behaviour at the Rio Games (where alcohol was involved).

2.25 The Bordeaux incident and what followed, touches on the elements referred to in the Terms - bullying, inappropriate personal relationships, a dysfunctional and drinking culture, and a lack of accountability.

2.26 Each of these will be discussed in turn.

Bullying

2.27 The first section in CNZ's Operations Policy is its code of conduct. Among other things, it provides prohibitions against conduct that:²³

- i) Might distress other employees; and
- ii) Has the effect of offending, humiliating or intimidating another workplace participant and has no legitimate workplace function;

2.28 It also defines and prohibits bullying:

Workplace bullying is not tolerated by Cycling New Zealand.

It is defined as repeated inappropriate behaviour, direct or indirect, whether verbal, physical or otherwise, conducted by one or more persons against another or others, at the place of work and/or in the course of employment, which could reasonably be regarded as undermining the individual's right to dignity at work.

Workplace bullying is language, visual material or physical behaviour that directly or indirectly: expresses hostility against or intimidates or ridicules an employee(s); is unwanted, hurtful and offensive to the employee(s); and has, **by its significant nature or through repetition**, a detrimental effect on an employee(s).

Breaches of these responsibilities and policy will be investigated and dealt with. Any employee found to be in breach of these policies may be subject to disciplinary action including dismissal.

2.29 The CNZ policy talks of repeated inappropriate behaviour, but in the further definition highlighted it allows for the possibility that a one-off and significant action which has a detrimental effect on an employee may be bullying. This appears to contrast with the WorkSafe definition.

2.30 The WorkSafe NZ definition of bullying is:²⁴

Workplace bullying is: **repeated and unreasonable behaviour directed towards a worker or a group of workers that can lead to physical or psychological harm.**

WorkSafe further states:

Workplace bullying is not:

- > one-off or occasional instances of forgetfulness, rudeness or tactlessness
- > setting high performance standards
- > a single incident of unreasonable behaviour

²³ Refer to Appendix B for the relevant section of the Operations Policy.

²⁴ <https://worksafe.govt.nz/the-toolshed/tools/bullying-prevention-toolbox/>

- > differences in opinion or personality clashes that do not escalate into bullying, harassment or violence.

- 2.31 Questions concerning bullying were answered differently by interviewees. Many people provided examples of behaviour that they considered to be bullying with little prompting. Others required a definition before answering and many said that they had never seen any bullying in the Programme.
- 2.32 In reaching my findings, I apply the Cycling NZ definition but read it consistently with the WorkSafe definition, so that I am considering repeated inappropriate behaviour towards a worker that can lead to harm.
- 2.33 For the purposes of this exercise, I have considered all those in the programme to be in the position of employees or workers.²⁵
- 2.34 I consider that there have been instances of bullying (or conduct which is otherwise prohibited by the CNZ Code of Conduct) in the Programme. The most frequent examples that were given involved the Coach. Examples involving the Coach include:
- *pressure exerted by a number of people (including the Coach) to get an athlete to give a false account (described above).*
 - *a staff member sent aggressive text messages by the Coach regarding their comments about events in Bordeaux (above).*
 - *a female athlete belittled repeatedly in front of others for raising an issue with her coach;*
 - *support staff and other coaches receiving repeated comments or behaviour which undermined them or made them feel unwanted or less valued;*
 - *a "prank" email and associated comments to a young athlete informing him that he would be removed from the programme causing him distress (for reasons that were believed at the time).*
 - *comments that a female athlete was fat (sometimes "fat bitch" or in one case when she was having a slow ride "it's because you're fat"), said in circumstances that the athlete might hear the comments and/or making others feel uncomfortable.*
 - *isolating athletes or ignoring them for significant periods of time such that they felt less valued or in one instance actually depressed.*
 - *exclusion of coaches or support staff or athletes who questioned or disagreed with the Coach and belittling of their skills or input.*

²⁵ See s 19 Health and Safety at Work Act 2015 (from 4 April 2016). I note here that I am viewing this from the perspective of the employee concerned and am not attributing the legal duty to a specific organisation (CNZ or HPSNZ). That is a separate legal issue and not one I need to reach a view on here.

- *repeated belittling comments made to a junior male rider (including being told he should be in the girls' team).*

2.35 Other examples of unsatisfactory conduct were also relayed to me involving the Coach and others. This included swearing at athletes and other one-off lapses of professionalism. Such behaviour is regrettable, but I do not consider them to reach the standard of bullying.

2.36 Throughout the Review and most often in the context of bullying, the issue of the distinction between demanding high performance and bullying was raised. Many athletes, coaches and support staff said that they did not see bullying behaviour from the Coach or otherwise and thought that what they observed was consistent with the high performance environment (demanding, tough, confronting, challenging and "hard-arse", were some of the descriptions).

2.37 The balance between welfare and performance was described to me as impossible to perfectly resolve. I am very conscious to take care to distinguish between demanding very high performance standards and bullying.

2.38 Baroness Tanni Grey-Thompson stated in her Duty of Care in Sport report of April 2017:²⁶

It is clear that the drive for success and desire to win should not be at the cost of the individuals involved. Allegations about the past need to be thoroughly investigated, but the focus must also remain on those in the current system to ensure that they are protected and free from harm, bullying, harassment and discrimination. Although there are processes and safeguards in place, the right culture is still required to ensure they work. Sport cannot think of itself as special or different and able to behave outside what are considered acceptable behaviour patterns.

2.39 The International Olympic Committee (IOC) Consensus Statement Harassment and Abuse in Sport (2016) includes:

It is incumbent upon all stakeholders in sport both to adopt general principles for safe sport... and to implement and monitor policies and procedures for safe sport... which state that: all athletes have a right to be treated with respect, protected from non-accidental violence...

2.40 The IOC Toolkit for safeguarding athletes from harassment and abuse in sport²⁷ contains detailed guidance as to how to develop policies and procedures, how to implement prevention mechanisms and how to manage reports of harassment and abuse.

2.41 The Toolkit is intended to be a step-by-step guide to implementing a safeguarding policy, underpinned by case studies, research, best practice guidelines, templates, and an online course.

²⁶ Duty of Care in Sport, Independent Report to Government, April 2017
<https://www.gov.uk/government/publications/duty-of-care-in-sport-review>

²⁷ IOC Toolkit Safeguarding Athletes from Harassment and Abuse in Sport, November 2017.

2.42 In its introduction, Sir Clive Woodward stated:²⁸

In becoming coaches we accept a duty of care to help athletes become the very best they can be. That means empowering and protecting them in every sense of the word.

2.43 The Independent Review Panel into the World Class Programme in British Cycling²⁹ commented as follows:

Finally, the Panel would like to emphasise that it is very confident that not only can a positive and supportive culture exist within a world-leading, medal-winning programme but such a culture can also sustain itself in the long-term and even improve upon previous medal successes. A modern, collaborative working environment for both staff and athletes – in which confidentiality is assured, complaints can be made without fear of retribution, communication is mature, and regular appraisals are carried out – will neither lead to an undue softening of a high performance environment nor the compromise of the pursuit of excellence.

2.44 It can be seen from these materials, and others listed above, that the issues of “Safe Sport” and the balance between performance and welfare appear to have been given global prominence relatively recently.

2.45 There is a risk that New Zealand’s sporting environment has not kept pace with the international environment and may now be forced to catch up.³⁰ Those coaches who continue to practice what they learned as athletes are bound to be well out of step with contemporary wisdom.

2.46 There is no reason, therefore, to suggest that a different standard should apply in a high-performance environment. The law applies equally but the context is different. Frank and challenging behaviour, including high demands, are acceptable if they are not harmful and unreasonable. That is where expert coaches, sport scientists, strength and conditioning experts, physiotherapists and others must collaborate with the athlete to optimise their performance and welfare.

2.47 The examples of behaviour that I have listed above appear to me to go beyond reasonable and into harmful. They were not reasonable or necessary in a high-performance environment.

2.48 While I found instances of bullying, and many of the instances were either by or related to the actions of the Coach, I was not presented with evidence that there was a widespread, systemic culture of bullying within the Programme. The broad consensus from those I spoke to who identified bullying was that the conduct was concentrated around (but not limited to) the Coach. The clear view I received was that the current environment was a more positive, collaborative and open one. The critical issue for Cycling NZ and HPSNZ is to do their best to ensure this cannot happen again.

²⁸ IOC Toolkit Safeguarding Athletes from Harassment and Abuse in Sport, page 17.

²⁹ Report of the Independent Review Panel into the Climate and Culture of the World Class Programme in British Cycling <http://www.ukssport.gov.uk/news/2017/06/14/british-cycling>

³⁰ The Cottrell review and the Integrity Review will contribute to this.

- 2.49 Workplace bullying is a serious and widespread problem including in sport.³¹ Workplaces need to ensure that stakeholders know what to do if they feel they themselves, or another, is being bullied.
- 2.50 Unfortunately, most people I spoke with did not know what to do if they believed they themselves, or another person, was being bullied. Many also thought that if they did raise an issue, nothing would get done about it. WorkSafe has identified the factors in which bullying can flourish and when it is less likely to flourish.³² Unfortunately, in respect to the Programme during this particular period and around this particular Coach, many of the factors allowing bullying to flourish were present.
- 2.51 Specifically, athletes in the Programme felt that they would be isolated and/or experience reprisals if they raised issues (and some did experience isolation and reprisals). The perception that “there are no consequences for poor behaviour” was a strong one.
- 2.52 There were many I spoke to who reported feeling deeply affected by the environment in the Programme and that the environment had been at least a contributor to their departure from the Programme and in some cases the sport.
- 2.53 Whilst it is difficult to determine precise causes, I am satisfied that this environment contributed to many leaving Cycling NZ. It is not possible to accurately determine the number impacted in this way, given this period coincided with the end of an Olympic cycle and there can be many reasons why a person leaves an employer. What particularly struck me was the passion, commitment and quality of people who were lost to the Programme.
- 2.54 There are two additional features present in these circumstances (and other areas of high performance sport) which means that there needs to be clear, viable options open to an individual who feels they are being bullied. These features mean athletes in particular are vulnerable to bullying or other workplace issues.
- 2.55 First, if the athlete is determined to have a career in track cycling, there is no other employer available. Only CNZ, with HPSNZ, can provide this. Unlike most occupations, High Performance athletes in many of our Olympic sports have no choice when it comes to their employer and/or coach if they want to represent New Zealand. This fact alone places the coaches in a significant position of power over the athlete.

³¹ For further discussion, see <https://worksafe.govt.nz/the-toolshed/tools/bullying-prevention-toolbox/>; the IOC Toolkit; USA Center for Safe Sport and other materials referred to above. I note the findings of the recent NZ Football review also which found bullying and harassment by the Football Ferns coach.

³² Refer <https://worksafe.govt.nz/the-toolshed/tools/bullying-prevention-toolbox/>; Preventing and Responding to Bullying at work at page 17.

- 2.56 Second, the coach is of primary importance to the success of the athlete. The coach can be the selector or at least is highly influential in the selection process. The coach influences many aspects of the athlete's training, performance and competition. This means that the fate of an athlete can at least be heavily influenced if not dictated by a coach. The mantra of HPSNZ is "performance driven, athlete focused, coach led", which is not intended to give the coach complete primacy but in practice makes that role of pivotal importance to the athlete.
- 2.57 The position of the coach therefore involves a significant power imbalance. This power imbalance is clearly recognised in the international material on athlete welfare.³³ The combination of these two factors increases significantly the risk of bullying or other unacceptable or inappropriate behaviour not being detected or acted upon.
- 2.58 Many athletes did not raise their concerns for these two reasons. They had very little power in the relationship and had seen athletes that raised concerns or spoke their minds be marginalised. Others were reluctant to raise the issue because they believed little or nothing would be done about it.
- 2.59 A further component of the circumstances is the success that the Coach and the men's sprint team were having. Consecutive World Champions and gold medal prospects, this team was singled out by the Coach and the Programme for special treatment. They were (and are) highly impressive athletes performing at the highest level. The Coach was considered to be integral to their success. In my view, this factor was a contributor to the environment that allowed bullying to flourish.
- 2.60 There are parallels and similarities with the situation which existed in UK Cycling which were examined by an Independent Panel over six months in 2016. The Independent Panel reported in draft in December 2016 and in final on 10 April 2017.³⁴
- 2.61 Amongst its conclusions, the Panel stated:
- The central pursuit of medals and derived National Lottery funding from UK Sport meant that the addressing of cultural and behavioural issues in the World Class Programme which were known since late 2012 was not prioritised.
- 2.62 The conclusions ought to have been influential on Cycling NZ and HPSNZ at least from April 2017.

³³ For example refer to the USA Center for Safe Sport Code of Conduct found at <https://safesport.org/> which states "Once a coach-Athlete relationship is established, a Power Imbalance is presumed to exist throughout the coach-Athlete relationship."

³⁴ Report of the Independent Review Panel into the Climate and Culture of the World Class Programme in British Cycling <http://www.ukssport.gov.uk/news/2017/06/14/british-cycling>

2.63 Those conclusions, and the UK Duty of Care in Sport report (above), are relevant despite the different context. For example, Baroness Tanni Grey-Thompson stated in the Duty of Care in Sport report:

Contributors to the review reported that it was often difficult to challenge the programmes that they were in, and hard to know where to go if they want to make a complaint about behaviour. It was also clear that people did not want to be seen to be causing trouble or jeopardise their sporting career, and felt they had little power to bring about change. Many reported that bullying behaviour could at least sometimes be the 'norm' in sport, and that they felt that they just had to "get on with it". This suggests that in some areas the culture is not the positive one that it should be. It is vital that participants know where they can go to make a complaint or blow the whistle on poor behaviour. Without second and, critically, third party assurance, the ability to make substantial change is limited.

2.64 My findings in the HPP are similar. With respect, it is well overdue that CNZ and HPSNZ address these issues comprehensively to ensure there is less opportunity for such a situation to arise again. I note for completeness that the precise scope of any duty owed by a particular organisation in these circumstances is not something which I can draw a conclusion on given the comparatively narrow focus of this review.

Inappropriate Personal Relationships

2.65 The subject of sexual relationships between consenting athletes and coaches (or others such as support personnel) is complex, contentious and requires careful attention. The athlete – coach relationship was described to me as a collaboration based on trust and confidence. As noted above, it is also a relationship where there is a power imbalance. It is a relationship of trust and power.³⁵

2.66 An intimate personal relationship between a coach and an athlete can undermine the necessary trust and confidence. Among other things, this threatens high performance as considerations beyond welfare and performance are likely to interfere.

2.67 The CNZ Code of Conduct records at 1.1 that stakeholders are:

to refrain from allowing workplace relationships to affect adversely the performance of official duties;

2.68 The Cycling NZ Code of Ethics (at that stage Cycling NZ was called Bike NZ) is reproduced at Appendix C because it is relevant to much of the behaviour discussed in this review. On 13 February 2014 the Coach signed that Code.

2.69 That Code of Ethics included:

³⁵ See for example USA Center for Safe Sport (above at footnote 9).

You should not only refrain from initiating a sexual relationship with riders, but should also discourage any attempt by an rider to initiate a sexual relationship with you, explaining the ethical basis of your refusal. [sic]

2.70 The wording reflected the content of the Sport NZ Coaches' Code of Ethics which stated:

You should not only refrain from initiating a sexual relationship with an athlete, but should also discourage any attempt by an athlete to initiate a sexual relationship with you, explaining the ethical basis of your refusal.

- 2.71 The Cycling Code of Ethics signed by the Coach, included agreements by him that he would abide by the Code, that disciplinary action may follow a breach and that established breaches could result in de-registration of coaching accreditation. The Coach acknowledged that CNZ is required to implement a complaints handling procedure in accordance with the principles of natural justice in the event of an allegation against him.
- 2.72 The HPSNZ Code of Conduct³⁶ contains some guidance but does not obviously cover the Coach or the athlete in question. The key requirement in that Code is one of notification to a manager and the CEO of HPSNZ.
- 2.73 Many athletes and coaches commented that an intimate relationship between a coach and an athlete was not to be tolerated. Some believed that what people did in their own time as consenting adults, regardless of their respective roles, should only concern the relevant individuals. I note that there are numerous relationships between athletes and coaches or support personnel in various NZ sports. The issue is not a straightforward one.
- 2.74 When the aim is to support the best and most promising cyclists to achieve optimal results on the world stage, an intimate relationship between any coach and an athlete creates difficulties requiring at the very least openness and careful management.
- 2.75 An intimate relationship between a coach and an athlete can distort decision-making in key areas such as selection, training schedules and other situations. The perception of favouritism is likely to be a powerful undermining factor in a positive team culture.
- 2.76 An intimate personal relationship which develops during a direct coach-athlete relationship is recognised internationally as prohibited or to be avoided, and if it were to arise, as something requiring disclosure and careful management.³⁷ Sport

³⁶ Relevant excerpts at Appendix D.

³⁷ For example USA Center for Safe Sport Code of Conduct prohibits sexual conduct or an intimate relationship between an athlete and their coach. See also International Council for Coaching Excellence (ICCE), Codes of Conduct for Coaches, http://www.icce.ws/assets/files/projects/Codes_of_Conduct_2012_study.pdf

organisations globally have adopted policies, guidelines, and codes of conduct that advise against or prohibit coaches and athletes from engaging in sexual relationships, regardless of age and informed consent.³⁸

2.77 The Australian Sports Commission (ASC), Member Protection Policy Template takes a nuanced approach. It states:

[name of NSO] understands that consensual intimate relationships (including, but not limited to sexual relationships) between coaches or officials and adult athletes may take place legally. However, this policy will help ensure that the expectations of coaches or officials are clear and, to ensure that if an intimate relationship does exist or develop between a coach or official and an adult athlete, that relationship will be managed in an appropriate manner.

Coaches and officials are required to conduct themselves in a professional and appropriate manner in all interactions with athletes. In particular, they must ensure that they treat athletes in a respectful and fair manner, and that they do not engage in sexual harassment, bullying, favouritism or exploitation.

We take the position that **consensual intimate relationships between coaches or officials and the adult athletes they coach should be avoided as they can have harmful effects on the athlete involved, on other athletes and coaches and on the sport's public image.** These relationships can also be perceived to be exploitative due to the differences in authority, power, maturity, status, influence and dependence between the coach or official and the athlete.

We recommend that if an athlete attempts to initiate an intimate relationship with a coach or official, the coach or official should discourage the athlete's approach and explain to the athlete why such a relationship is not appropriate.

If a consensual intimate relationship does exist or develop between an adult athlete and a coach or official, the coach or official is expected to ensure that the relationship is appropriate and that it does not compromise impartiality, professional standards or the relationship of trust the coach or official has with the athlete and/or other athletes.

In assessing the appropriateness of an intimate relationship between a coach or official and an adult athlete, relevant factors include, but are not limited to:

- *the relative age and social maturity of the athlete;*
- *any potential vulnerability of the athlete;*
- *any financial and/or emotional dependence of the athlete on the coach or official;*
- *the ability of the coach or official to influence the progress, outcomes or progression of the athlete's performance and/or career;*
- *the extent of power imbalance between the athlete and coach or official; and*
- *the likelihood of the relationship having an adverse impact on the athlete and/or other athletes.*

It will often be difficult for a coach or official involved in an intimate relationship with an adult athlete to make an objective assessment of its appropriateness and accordingly they are encouraged to seek advice from [the Member Protection Information Officer, Complaints Manager or other official] to ensure that they have not involved themselves in inappropriate or unprofessional conduct.

If it is determined that an intimate relationship between a coach or official and an adult athlete is inappropriate or unprofessional we may take disciplinary action against the coach or official up to and including dismissal. Action may also be taken to stop the coaching relationship with the athlete. This could include a transfer, a request for resignation or dismissal from coaching duties.

Coaching Association of Canada (CAC). Coaching Code of Ethics, https://www.coach.ca/files/CAC_Code_of_Conduct_EN.pdf

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Above and also - Sports Coach UK. Code of Practice for Sports Coaches:

Rights/relationships/responsibilities, <https://www.ukcoaching.org/resources/guides/code-of-practice-for-sports-coaches>

United States Olympic Committee coaching ethics code, <https://www.teamusa.org/About-the-USOC/Athlete-Development/Coaching-Education/Code-of-Ethics>

- 2.78 A sexual or intimate relationship between a coach and an athlete they are coaching will (in my view) adversely affect the performance by that coach of official duties. The majority of those interviewed considered that if an intimate personal relationship was to develop during a direct coach-athlete relationship and it was not disclosed and managed (for example by assigning another coach), that would be unacceptable and would require further action.
- 2.79 Given the mixed views from those interviewed, and the slight variance in the approach internationally, I recommend the policies and practices of CNZ and HPSNZ be reviewed and (if necessary) clarified.

Evidence of such a relationship

- 2.80 Many interviewees said to me that "everyone knew" the Coach and athlete were involved in an intimate relationship. With respect, that appears to be with the benefit of hindsight and based more on instinct than evidence. As submitted to me, that sort of comment is not sufficient to base a finding upon or to pursue disciplinary action.
- 2.81 I approach this exercise, not as a judge with competing parties, rules of evidence and a burden of proof, but rather as an inquirer considering whether I am satisfied that such an intimate personal relationship existed on the evidence available to me (whether admissible in a Court or not). I am able, with benefit of hindsight and many sources of information, both direct and indirect, to evaluate that issue. Cycling NZ or HPSNZ did not have that advantage.
- 2.82 On balance, I am satisfied, based on all the information I have considered that there was an intimate and sexual relationship between the Coach and the female athlete. I note that both parties are adult and there was no suggestion from any person that it was other than consensual.
- 2.83 I have considered in particular the following matters. They are listed in summary. No single factor alone is determinative. It is the cumulative impact which convinces me.
- One person saw the athlete and the Coach going out together alone late at night under the influence of alcohol in March 2016.
 - The incident on 17/18 July in Bordeaux, France.³⁹

³⁹ While I accept that at the time this incident could be viewed as an anomaly, there are important considerations that I believe should have been realised in regard to determining whether or not an inappropriate personal relationship was taking place. It was clear to those investigating that there was at least a risk that central figures were not telling the truth about the events in Bordeaux. This should have been concerning in itself given the power dynamic already outlined and the involvement of alcohol. The account of one witness of an intimate moment between the two was not contained in the investigative reports which went to the HPD and CEO. The other witness did not observe it. CNZ would not have been able to conclude such a relationship was occurring without further information but that information was potentially being withheld because of the culture which existed.

- The Coach and athlete were seen alone together in social settings (after Bordeaux).
- At Rio, the Coach and the athlete were seen together in the early hours of the morning, alone and entering a lift (in circumstances that the witness thought "what's going on").
- A number of interviewees noted a change in behaviour between the two, describing "lovers tiffs" or conduct which appeared to be that of a couple.
- Special training and other arrangements were made by the Coach for the athlete including allowing special times for training sessions. Interviewees described favouritism from the Coach to the athlete, in particular as to selection for certain events and training with the men's sprint team.
- In May 2017, the then Board Chair received direct confidential information that confirmed to him that there was such a relationship between the two. He referred that to the CEO.
- The CEO investigated the suggestion informally and responded to the Chair that *"it is looking very likely there has been a fair degree of covering up, and if the evidence is there as suspected it is likely to get challenging to keep him."*
- The athlete herself admitted to at least one person interviewed she was sleeping with the Coach (this was in 2018).
- The athlete was seen regularly at the Coach's house from October 2017 onwards by a neighbour and others.
- A person in the Coach's house noticed female toiletries and items likely linked to the athlete (March 2018).

2.84 Both the Coach and the athlete were given the opportunity to be interviewed by me (on a number of occasions) and to provide any material in response to my request and the Terms. The Coach provided a written statement before my draft report and then a statement through his lawyer in response to the draft report. In summary the Coach submitted that the evidence was unreliable and inaccurate. At no stage did the Coach provide an alternative narrative or explanation of events or challenge the evidence listed above.

2.85 In his original statement, the Coach stated that CNZ needs to be extremely cautious when dealing with relationships. The Coach went on to specify a number of high-profile coach-athlete relationships in NZ cycling which were public knowledge. The circumstances of those relationships are not for me to comment on, but I infer from the Coach's comments that there was no clarity as to the boundaries between acceptable and unacceptable relationships between a coach and an athlete.

- 2.86 The Code of Ethics the Coach signed is clear as is the Sport NZ Coaches' Code. I accept that there may have been less clarity in the practice or procedure of CNZ and perhaps more guidance should have been given.
- 2.87 The Coach did not deny the existence of the relationship to me. He did, however, deny such a relationship when it was put to him by others.
- 2.88 The athlete declined to participate prior to receiving the draft report and I draw no adverse inference from that. The athlete did provide comment on the draft report which I have considered and reflected where appropriate. In summary, on this issue, the athlete stated that she was certain that many statements made to me were fabricated and were evidentially weak. She did not, however, identify which ones were fabricated or provide any alternative explanation for the circumstances I have described.
- 2.89 On balance, considering all the material I received, I am satisfied that such an intimate and inappropriate personal relationship existed between the two during the period under review. It was not disclosed by either party. It was aggravated by the circumstances that the then partner of the athlete was also an athlete in the Programme. That compounds the impact upon the ability of the Coach to perform his duties.

Dysfunctional Culture

- 2.90 A dysfunctional culture is one that does not operate normally or properly. It is important to emphasise that culture results from the product of the conduct of many people. It would be wrong to conclude that the Coach was the only source of the issues here. Many of those interviewed emphasised the "Old Boys Club" which existed and the lack of action from leadership⁴⁰ on conduct issues including the conduct of athletes and coaches other than the Coach.
- 2.91 This section also covers the substance of the question in 2.4 of the Terms regarding a "toxic culture". Again, there was plenty of evidence to suggest that was the case in parts of the Programme.
- 2.92 The culture that existed over the Review Period did not allow the Programme to operate optimally. There are many symptoms of this. Following the Rio Olympics and in the year following many athletes and staff left the Programme.⁴¹ This included athletes, coaches, sports scientists, a doctor, physios and a mechanic. It is impossible to now determine the precise reasons for their departure, although many

⁴⁰ Head Coach, HPD and CEO.

⁴¹ The number has been the subject of some debate. There were 10 support personnel who left and up to 10 athletes during the following year.

stated to me that the culture contributed. It is common, however, for significant staff changes to occur at the conclusion of the four-year Olympic cycle.

2.93 One manifestation of the lack of trust in the Programme was the way in which health professionals were used by participants as an outlet for their concerns without fear of reprisal. This unconventional use of patient confidentiality highlighted a distinct lack of trust in the environment and placed significant further strain on professionals in an already demanding role. I note that the introduction of sports psychology expertise was an important and significant improvement to the environment and culture.

2.94 A divide between the endurance and sprint squads was frequently expressed to me. Part of this was put down to the different nature of the disciplines and the different training programmes as a result. The Coach was accused of propagating this divide. The Coach described himself to others as a bulldozer whose job was to clear the path as best he could for his athletes. There is no doubt the Coach was passionate, focussed and totally committed to achieving the best results for the men's sprint team.

2.95 The Code of Ethics he signed, however, required him to:

Be a positive role model for cycling and riders and act in a way that projects a positive image of coaching (including)

- All riders are deserving of equal attention and opportunities.

2.96 While the passion for some of his own athletes is to be commended, his obligation, and the role of management, was to ensure that it was controlled and channelled so that it did not detrimentally impact others in the Programme.

2.97 As far back as the investigation after Bordeaux, the HPD and CEO were aware that the Coach needed assistance to deal with issues which were impacting on his welfare.⁴² This does not seem to have been addressed. The Coach stated to me:

Even the most cursory glance at my performance appraisals will show that I was not alerted to any concerns about any of the issues that have reached the media. There were no verbal instructions or comments from Cycling New Zealand on any of these matters.

Cycling New Zealand's failure to address these issues before May 2018 suggest that the issues were not significant, or they were incompetent. They gave no indication of any need for professional development in any area at all. If there was an issue I would have been happy to address it, had I have had the chance to do so.⁴³

2.98 A significant majority of people I interviewed that were directly involved in the Programme commented on the "pedestal" that certain athletes were placed on. An example of the divide between these athletes and the rest was the exclusion of all others while they used the gym in the lead up to Rio. On occasion athletes had to

⁴² As referred to earlier, I have not detailed those issues as they are health related.

⁴³ Although it is difficult to provide support to an individual who denies they have an issue. Support was available to him through the HPSNZ Carded Coach programme if he was willing to seek it.

accept sub-optimal locations or timings to get access. This appeared to only further the feeling of an “us” and “them” divide.

2.99 One of the HPSNZ Rio debrief documents (noted below) identified culture as a significant issue. It summarised matters by saying:

The existing culture is not compatible with a professionally created, implemented and managed high-performance plan.

In my view at least during the review period up until early 2018 that was correct.

2.100 A CNZ Review document produced by the HPD and CEO of CNZ was provided to HPSNZ in early November 2016. It noted the Rio programme lessons included under the heading “Culture”:

- Significant imbalance of a focus on results over people to the detriment of the system, peoples’ well-being, and sustainability of the programme.
- Lack of safety to challenge/express self and with regards to job security/selection of targeted support staff.
 - Therefore lack of cultural values (such as “toughness”, old boys network) holding new culture from developing.
- Clear leadership, alignment and roles required.
 - Accountability and professionalism is variable across individuals operating models.

2.101 The HPSNZ Knowledge for Rio Debrief Survey Summary⁴⁴ of the CNZ Track team recorded the most significant barrier overall was “issues with culture and relationships at all levels (athlete, coach, support staff, NSO)”.

2.102 Whether the culture is described as dysfunctional or otherwise does not matter. The culture was not compatible with high performance and it needed to be. For reasons I explain below, this culture was not able to be shifted until at least 2018.

2.103 A further factor which was mentioned by many in the interviews was the impact of centralisation on the Programme. Since early 2014, the Programme and participants were based in Cambridge at the Avantidrome. The impacts of this on culture and relationships within the Programme were not necessarily obvious by the time of the review period. There is a question whether sufficient care was taken to ensure that the welfare impacts of centralisation were properly understood and planned for. For example, the impact of the change from sporadic intense contact amongst participants (say when on a campaign) to living and working in the same small town, away from family and other support.

2.104 The impact of this on personal relationships and other matters of welfare need to be considered.

⁴⁴ I note that the HPSNZ Board did not receive this document nor the document referred as the Interim Report/Key Themes document.

2.105 I note for completeness that many in the Programme or involved with it reported to me that the environment and culture has improved markedly during 2018. That includes those who have an independent and objective view of it (such as independent professionals). Many said that the departure of the Coach made a significant difference. In my opinion, it is a much more complex combination of circumstances and events.

Drinking Culture

2.106 The assessment of a drinking culture in a high-performance environment compared to general New Zealand society is likely to involve differences of degree. Both involve a culture where drinking to relative excess is at least tolerated or condoned. It is obvious that excessive consumption of alcohol is anathema to high performance.

2.107 In both the Fixed term and Permanent employment agreements used by CNZ, there are references to drinking in the serious misconduct sections. Both agreements provide:

15.6 Notwithstanding clause 15.3 we may, in the event of serious misconduct by you, after considering your explanation of the matter of complaint, terminate this Agreement without notice.

15.7 "Serious misconduct" includes (but will not be limited to):

...

(j) Being drunk, purchasing or using illegal substances, drug derivatives or drugs whilst on Cycling New Zealand business;

2.108 The CNZ Code of Ethics requires the Coach to be a positive role model, including the Coach agreeing to:

Encourage and promote a healthy lifestyle - refrain from smoking and drinking alcohol around riders.

2.109 On occasions the Coach's behaviour contravened these requirements. As mentioned, he was intoxicated with an athlete in close proximity to Rio. Following this, he was placed on a drinking ban which he disregarded. He was also seen intoxicated in the airport lounge and on the flight home from the Los Angeles World Cup in 2017. Many individuals described the Coach as having a drinking problem.

2.110 The Coach was not the only member of the programme who on occasions was drunk whilst on Cycling NZ business. Some of those matters are referred to already. Further steps should be taken to ensure that there is clarity regarding expectations from CNZ.

2.111 Interviewees were very divided on whether there was a wider "drinking culture". Most said that while there were a limited number of individuals who drank to excess whilst on tour, the majority of athletes and staff treated alcohol responsibly.

2.112 I am satisfied on the information presented to me that, outside of a small group of individuals (including the Coach), there was not a "drinking culture". Drinking in excess was not encouraged or tolerated outside that group. Alcohol was present at team functions, but only at the end of the competition. Individual adults (athletes and others) were left to make their own choices. Most behaved responsibly.

2.113 Unfortunately, there was insufficient accountability in respect to drinking. This lack of accountability is discussed below.

Lack of Accountability

2.114 A lack of accountability exists when people are not held responsible for inappropriate behaviour. This was an overriding theme that emerged from interviews as being a problem in the Programme.

2.115 There was a lack of accountability at all levels of CNZ during the review period.⁴⁵ Examples include:

- a) The Coach being placed on a drinking ban then openly drinking within days without consequence;
- b) The bullying behaviour and other unacceptable conduct, outlined above, continuing without there seeming to be a mechanism or process to report or deal with it;
- c) Behaviour that could well have amounted to a breach of employment agreements without proper investigation or process followed to hold the relevant individual to account;
- d) Unreasonable or irrational decision making, without process or justification to management (examples include irrational changes to travel arrangements or equipment, illogical trial arrangements and opaque selection methods);
- e) Evidence of a coach and an athlete being in an inappropriate personal relationship without a proper investigation or inquiry into whether it existed or not, or without other measures taken to mitigate the impact of it.

2.116 The lack of accountability that permeated CNZ was a major contributing factor in the negative behaviour that occurred during the Programme over the review period. The feedback post Rio revealed this as a theme.

2.117 The Coach's response to me that he did not get alerted to any concerns, whilst difficult to accept entirely⁴⁶ is likely to have some validity, given both his personality and the apparent reluctance to hold people accountable. For example, the issue of an inappropriate relationship (or personal boundaries generally) was not raised with

⁴⁵

⁴⁶ The Coach was given a formal verbal warning on 9 September 2016 in relation to the Bordeaux incident. In May 2017 the issue of alcohol consumption was said to have been raised in his performance review.

him by the CEO in his May 2017 performance review despite the Chair of CNZ and CEO being alerted to it just two weeks beforehand.

2.118 Most of the negative behaviour that occurred in the Programme over the review period appeared to be engaged in by a small minority (coaches and athletes). Some of the behaviour was of a sufficient level that it should have resulted in consequences much earlier.

2.119 The response of Cycling NZ to these issues is examined further below.

WAS CYCLING NZ'S RESPONSE ADEQUATE AND APPROPRIATE?

TERMS 2.2

Summary

3.1 The action taken by CNZ was not adequate or appropriate. More could and should have been done to investigate and understand not only the cultural and behavioural issues discussed, but also to ensure instances of bullying or other potential misconduct were properly investigated and dealt with. There was a complex combination of reasons this did not occur. My reasons in summary are below.

Events in 2016

3.2 Following the Bordeaux incident the CEO was made aware of the allegations that an athlete and a staff member were pressured not to tell the truth about it. Counselling was provided for the affected staff member when they returned to New Zealand. The CEO also offered to initiate a formal investigation process. This was declined by the staff member at the time.

3.3 The athlete was supported by a staff member while they were away from New Zealand and was given psychological support upon their return. No further action was taken in response to this event. The reason was that no formal complaint was laid and that the athlete did not want her identity revealed. The CEO considered he did not have the ability to proceed with an investigation without disclosing the identity of the complainant.

3.4 The CNZ CEO also told me that he felt he was not being given the full picture in relation to the event in Bordeaux. He enquired of the Head Coach and was assured as to the accuracy of his report. The CEO had taken responsibility for the disciplinary process in respect to the incident (refer above) and had the responsibility for ensuring there was a proper investigation and process which followed.

3.5 The CEO took the view that without a formal complaint no further action could be taken. A similar position was reiterated in feedback on the draft report. In my view, whilst understandable, that is too narrow a view. Whilst a formal complaint usually precedes an investigation, it is not a pre-requisite. In addition, even if it was treated as a pre-requisite, there were other options which could have been explored (such as empowering the person to complain, taking an informal approach to resolution, and/or implementing educative or preventative measures).⁴⁷

⁴⁷ See for example the various WorkSafe publications on bullying found at <https://worksafe.govt.nz/the-toolshed/tools/bullying-prevention-toolbox/>.

- 3.6 The first obligation is to do what is reasonable to ensure the risk of bullying was eliminated. If the risk cannot be eliminated, then the obligation is to minimise it.
- 3.7 The disciplinary process was not yet complete in respect to the Bordeaux incident. The risk of bullying was ongoing. The impact on the athlete and team manager had already been seen to be significant in terms of distress and harm. The CEO knew that he was not getting full information and the risk of bullying was obvious. I accept the situation was complicated by the reluctance of the complainants, but that ought to have been a concerning factor which required more thought and exploration of other options.
- 3.8 The WorkSafe Guidelines in existence at the time⁴⁸ required the employer to:
- create complaint-handling processes,
 - take complaints seriously,
 - develop a culture where bullying cannot thrive,
 - identify hazards associated with bullying and put controls in place,
 - ensure there is training and ensure an effective and timely response to allegations.
- 3.9 It was not appropriate or adequate to do nothing further in respect to what appeared to be a sinister and distressing example of bullying.
- 3.10 The incident and the failure to hold people to account for what occurred in and around it, had a significant impact on the culture of the Programme. Those alleged to have engaged in the conduct were senior and in positions of relative power over the victims. The victims were relatively junior female members of the programme (although one was in management). I commend them for their courage in the face of such treatment.⁴⁹
- 3.11 On its face, the conduct appeared to have breached CNZ's Operations Policy. While the individuals who suffered the conduct may not have wanted to pursue the matters, the power imbalance in both instances should have been adequately considered in deciding not to take any further steps.
- 3.12 The CEO of CNZ was also aware that the Coach had been drunk whilst on CNZ business within a few weeks of the pinnacle event for the four-year cycle. He agreed that this was a highly unusual incident.
- 3.13 On 9 September 2016 the CEO met with the Coach and gave him a formal verbal warning. This was a lesser response than recommended by the HPD and suggested

⁴⁸ Preventing and Responding to Workplace Bullying Best Practice Guidelines, February 2014.

⁴⁹ The athlete involved submitted on this paragraph of the draft report that the women concerned were not telling the truth, that they were "supposed victims" who had submitted "sensationalised stories". I have considered that proposition and do not accept it, primarily because the women were credible, reliable and their accounts were backed by contemporaneous documentation.

by the Board Chair. The reasons for that have been explained already. The warning proved to be of limited effect.

- 3.14 As mentioned above, in Rio there was an incident at the conclusion of the track cycling competition that resulted in a coach being hospitalised. Alcohol was also involved in this incident. It was recorded that the coach involved had a "big night – getting home at around 5:30 am". The coach reportedly had not eaten for some time and had a severe reaction to the alcohol as a result of previous medical issues. The extent to which alcohol was the cause of the hospitalisation cannot be determined at this point. The relevant coach was given a formal verbal warning from the HPD after consultation with the CEO.
- 3.15 Following the Rio Olympics an extensive debrief process was undertaken. It is discussed in more detail below. The result was five reports, staggered timing, a lack of coherence and sub-optimal clarity around conclusions. Whilst there was admirable detail and common themes, the proliferation of material, differing recipients and staggered timing made it at least confusing.
- 3.16 One of the debrief Reports (the Key Themes Review noted below) went to the CNZ Board for its 25 October 2016 meeting. Following that meeting, it determined a course of action.⁵⁰
- 3.17 There followed significant change in personnel in the Programme. The HPD resigned in November 2016 and was replaced in the interim by the CEO (taking on the role of HPD as well). Another coach involved in Rio resigned early in 2017, a seconded HPD came into the programme in July 2017 (from HPSNZ) and the former Head Coach resigned in September 2017. After a year-long process, with two extensive searches, a full-time replacement HPD was appointed in December 2017 (who is now in place).
- 3.18 The issue of alcohol arose again in March 2017 when the CEO recorded being surprised that a member of HPSNZ knew that "one of our coaches had a stated issue with alcohol and it was chosen to be withheld from the leadership of CNZ on confidentiality grounds".
- 3.19 The CEO stated in March 2017:

I think this was very significant as it did not enable the sport to play a suitable role in supporting this coach and managing risks. We did see the effects of this alcohol issue play out significantly during the Olympic campaign.

[the coach referred to is the Coach in this review]⁵¹

- 3.20 Following the 2017 Hong Kong Track World Championships, a CNZ staff member

⁵⁰ The Board appears to have done so without the benefit of the other reports mentioned.

⁵¹

approached the CEO alleging that the Coach consumed alcohol excessively at the end of competition. The staff member had not witnessed the events but had heard about them from another team at the competition. The CEO was at this event and did not see concerning behaviour. In response to the allegation the CEO consulted the team manager to see whether they had seen any inappropriate drinking. They had not. No further investigation was undertaken. The CEO had a number of sources of information by then to suggest it was an issue (including from HPSNZ). Again the approach of the CEO seemed to be binary – either there was sufficient evidence or not, without considering other avenues, further investigation or risk mitigation strategies (education, encouragement, mentoring, HPSNZ support for example).

- 3.21 In early May 2017, the then Chair of the CNZ board was approached by an individual with information that the Coach was having an inappropriate personal relationship with an athlete. The Chair recorded some of the steps he took in response to this information in an email to the CEO on 11 May 2017:

Conduct discussion – I have spoken first hand with the informant and confirmed that the circumstances described is factual and the partner involved spoke openly about it, being the last to know. The alcohol (often accompanied by hangover) issue is also commonly known among athletes. Something serious to deal with, the ripple effect is significant.

- 3.22 The response later that day from the CEO was:

Thanks for following up in relation to the conduct discussion. I also have been doing quite a bit of digging today. It is looking very likely there has been a fair degree of covering up, and if the evidence is there as suspected it is likely to get challenging to keep him. I am going to ring the employment expert who helped me with ... to get good advice on how we need to work through this carefully.

- 3.23 The CEO said he kept a “watching brief” on the situation, however, as he could find no evidence to substantiate these rumours at the time, he determined he could not take the matter further.

- 3.24 On 25 May 2017, the Coach had his annual performance review. The CEO raised the allegations about alcohol misuse in Hong Kong – which were denied completely.⁵² The CEO did not advance the matter as he said he had no evidence to substantiate the allegations. Given the history, this again does not seem adequate.

- 3.25 Although this appraisal appears to have been just two weeks after the information received by the CEO about the intimate relationship, it does not appear to have been raised at the appraisal nor any other step taken to mitigate its potential impact.

- 3.26 The rumours of an inappropriate personal relationship between the Coach and an athlete continued to circulate during the latter half of 2017. The seconded HPD

⁵² I note again the Coach stated to me that such issues were never raised with him. I find that difficult to accept.

asked the Coach and athlete concerned whether or not they were true. Both parties told him they were not.

- 3.27 An annual staff engagement survey was conducted by CNZ in September 2017. Consistent with the Rio debrief report and with comments to me, the findings showed low engagement scores in respect to the culture of the organisation.
- 3.28 In late 2017, the CEO was again approached by a staff member who also alleged excessive drinking by the Coach while at the Milton and Santiago UCI Track World Cups. The team managers for the respective World Cups were spoken to. No further information was obtained. Because of this, these allegations were not pursued further. The allegations were not put to the Coach. Again, the investigative process appears to have been truncated when by this stage the CEO had multiple accounts suggesting the Coach had a drinking issue.

2018

- 3.29 On 5 May 2018, a departing staff member reported to the CNZ CEO that they had been bullied by the Coach. The departing staff member was comfortable with the information they had provided being used as part of a possible formal investigation and/or disciplinary process.
- 3.30 On 12 May 2018 an athlete reported to the CNZ CEO that they were bullied by the Coach. This athlete was also comfortable with the information they had provided being used as part of a possible formal investigation and/or disciplinary process.
- 3.31 Also on 12 May 2018 an athlete reported to the CNZ CEO that another athlete had admitted to them that they were in a personal relationship with the Coach. This was noted by the CEO as being, "the first genuine alleged evidence presented to me".

Summary

- 3.32 CNZ was aware of the following issues at the following times:
- 1) *A staff member pressuring another staff member to not relay information relating to the incident in France, July 2016;*
 - 2) *An athlete pressuring another athlete to not relay information relating to the incident in France, July 2016;*
 - 3) *The Coach drinking outside of team protocols, July 2016. Verbal warning given on 9 September 2016.*
 - 4) *A staff member drinking and requiring hospitalisation, July 2016. Verbal warning given.*

- 5) *Confidential information (thought to be reliable) of an inappropriate personal relationship between an athlete and the Coach, communicated to the CEO by the then board Chair, which upon investigation appeared to have substance, May 2017;*
- 6) *Allegations regarding excessive drinking at the Hong Kong UCI Track World Championships, April-May 2017;*
- 7) *Allegations regarding excessive drinking at the Milton and Santiago Track World Cups, December 2017;*
- 8) *A staff member reporting being bullied by another staff member, May 2018;*
- 9) *An athlete reporting being bullied by a staff member, May 2018;*
- 10) *An athlete reporting that another athlete had said that they were in a personal relationship with a coach, May 2018.*

3.33 Only 2 of the 10 allegations resulted in any form of disciplinary action (although action on the final three matters was pre-empted by the Coach's resignation). All but one of the allegations involved the Coach or his behaviour.

CNZ Board Knowledge

3.34 The Board comprises 4 elected and 4 independent directors. The 4 elected Board members are nominated and elected by the CNZ member organisations at the AGM.

3.35 After the Rio Debrief process, the CNZ Board oversaw a planning and change programme that was focused on improving culture, leadership, and the planning of the Programme. This programme manifested itself in the creation of a senior leadership team, an annual staff survey, staff members presenting at Board meetings and an all staff workshop with Wayne Smith (former All Blacks coach). The Board also unanimously agreed to undertake the Sport NZ Governance Mark programme.

3.36 No specific issues of inappropriate behaviour involving the Coach were formally raised with the current CNZ Chair until early May 2018 when the CEO of CNZ contacted the Chair about an alleged inappropriate relationship between the Coach and an athlete. On 20 May 2018 the Board was briefed by the CEO on the issue. Before then issues regarding inappropriate behaviour do not appear to have been formally raised with them.

- 3.37 Minutes of the Board did however record issues with staff workload,⁵³ and culture.⁵⁴ The issues relating to general welfare of the staff (stress, workload, culture) must have been well known to the Board.
- 3.38 At the 20 May 2018 meeting, the Board agreed on an approach for the CNZ CEO to follow.

Conclusion on whether CNZ response was adequate and appropriate

- 3.39 In my view, CNZ did not do enough to respond to the issues identified in the terms of reference from after the Bordeaux incident, through 2017 and into 2018. Potentially serious drinking and bullying incidents were not investigated fully, nor were underlying causes examined or mitigated.
- 3.40 The CEO appeared to take a one-dimensional approach to the issues and did not appear to engage sufficient internal or external resources to assist him. Attempts to resolve matters informally or engage in preventative or educative methods were not considered or (if they were) advanced.
- 3.41 In response to the draft report, the CEO again stressed that there was an absence of “genuine tangible evidence” and that the requirements of employment law obligations and legal processes prevented further action. He stated that he was not able to undertake investigations whilst holding the allegation confidential and this would breach natural justice and be at odds with advice obtained by CNZ.
- 3.42 The response that there was a lack of evidence is circular. It depends in part on the quality of the investigation process. An employer is obliged to undertake a reasonable investigation not simply in response to a complaint but also on receipt of relevant information where there is a risk of harm. Issues relating to anonymity requested by the informant can be dealt with whilst still providing natural justice (although care must be taken to ensure the basic principles are adhered to).
- 3.43 Those basic principles are a proper investigation, fair and reasonable notice of the allegations, a reasonable opportunity to respond to the allegations and a fair consideration of the response. In short, whilst care must be taken, a formal complaint is not a prerequisite and protection of the complainant’s identity is not insurmountable.⁵⁵ The suggestion by the CEO that he was not able to take further

⁵³ Minutes of 4 April 2016 at 1.6; Minutes of 4 July 2016 at 1.7; Minutes of 29 August 2016 at 1.6; Minutes of 3 April 2017; Monday 10 July 2017 at 2.1*["To have a truly sustainable system HPSNZ need to enable NSO's to get on with their jobs and ensure there is capacity so staff are not burned in the process"]; Minutes of 28 August 2017 at 1.6* ["More balance in this area now, not quite down to a 3 yet"]; Minutes of 16 October 2017 at 1.6; Minutes of 11 December 2017 at 5.4; Minutes of 12 February 2018 at 2.1; Minutes of 26 March 2018 at 5.4.

⁵⁴ Minutes of 15 February 2016 at 3.2; Minutes of 25 October 2016 at 1.8; Minutes of 11 December 2017 at 6.1.

⁵⁵ <https://worksafe.govt.nz/the-toolshed/tools/bullying-prevention-toolbox/>
Employment Relations Act 2000, ss 4 and 103A.

steps or other action because of employment law, natural justice or the limits of confidentiality is not only wrong but ignores the range of other options open to an employer to ensure workplace bullying does not occur.

3.44 There was a complex combination of reasons which contributed to the lack of accountability and failure to adequately deal with the behavioural issues. In my view they included:

- The particular personality of the Coach in question;
- The importance of the Coach to the overall Programme;
- The culture within the Programme - a reluctance to surface issues for the reasons already discussed, which in turn led to a lack of evidence;
- A lack of human resources capability within CNZ and insufficient use of external assistance;
- The workload of the CEO, including taking on the interim HPD role and the role of General Manager of the Home of Cycling (Velodrome trust);
- An element of an "Old Boys Club" whereby relationships amongst coaches and consultants appeared to prevent them holding others to account for poor behaviour; and
- The time spent offshore by members of the HPP for international training and racing.

3.45 The first, second and third points have already been discussed.

3.46 The fourth point relates to a lack of human resources capability in CNZ. I was told that this was not unique in NSO's and it is evident to me that CNZ runs in a lean fashion. Salaries are not high, workload is. The Board are volunteers. There appears to me to be a striking lack of HR capability.

3.47 HPSNZ and others submitted to me that during the period under review, HPSNZ and Sport NZ provided substantial support to CNZ. This included senior personnel from Sport NZ and HPSNZ, together with additional support provided by Athlete Performance Consultants, Campaign Consultants and other expertise, including psychologists, medical specialists and assistance with the Coach Accelerator Programme. As also noted, HPSNZ provided a secondee as interim HPD for the period 1 July to 30 November 2017.⁵⁶ The limited budget of HPSNZ (compared to other countries) was emphasised to me and I accept that. The support provided was

Brown v Bob Owens Retirement Village Ltd [2013] NZERA Auckland 526; *Richard v Winstone Wallboards Ltd* ERA Auckland AA168/07, 8 June 2007.

<https://www.employment.govt.nz/resolving-problems/steps-to-resolve/disciplinary-action/investigation/>

⁵⁶ HPSNZ also emphasised that substantial investment has been made by the Sport NZ group into CNZ, outside high-performance funding. These interventions and assistance were provided as means of ensuring the outcome that "Bike NZ is a stable, sustainable and capable organisation", outcomes that were set following the Martin Jenkins review, in 2013.

substantial but it did not appear to be immediately relevant to the human resources capability.

- 3.48 CNZ submitted that the base line levels of investment in the high performance system is below the levels required and there is an ongoing expectation for NSOs to do more with the same or less net funding. This in turn leads to NSO staff being under excessive workload and pressure. CNZ and others also submitted that the broader sport funding model has notable flaws, leading to lesser investment in the core base functions of NSOs. This is said to have made NSOs such as CNZ fragile and vulnerable. Criticism here is levelled at Sport NZ.
- 3.49 The fifth point relates to the workload of the CEO. Following Rio, he was responsible for significant strategic planning, major cultural and other change in the organisation, combined with a potential \$500,000 budget reduction, changes in key staff in the Programme and many other challenges across the organisation. In addition, he took on the High Performance Director role and had taken on the general manager role of the Home of Cycling. The assumption of the HPD role by the CEO was done because there appeared to be no other option and it was only intended to be short term cover. Due to the difficulty of securing a new HPD, the CEO was acting in the role longer than intended.
- 3.50 It appeared to me that he was attempting to perform three roles, whilst implementing major organisational change. The former Board Chair agreed that this was unrealistic in hindsight. In my view, whilst showing admirable commitment from the CEO,⁵⁷ it was not sensible and neither the CEO nor the Board ought to have allowed this to occur for more than a very short transition period.⁵⁸
- 3.51 There was no reasonable prospect of the CEO giving the matters raised in this review sufficient priority with such competing demands.
- 3.52 The sixth point relates to the frequent comment that I received which described the coaching environment in the programme as an “old boys club”. In particular that some of the coaches and HPSNZ consultants had trained or raced together and then moved into coaching or other roles. The essence of this criticism was that existing personal relationships might have prevented people from holding others to account or speaking out about unacceptable behaviour.
- 3.53 Given the number of times it was expressed, and the failure of those coaches and consultants to escalate issues around the behaviour of some of the coaches (and athletes), I am satisfied that this was an impediment to the culture and environment of the organisation. It appeared to me that the “old boys club” operated to restrict

⁵⁷ The CEO was given a positive performance review in 2017 and there are positive achievements noted.
⁵⁸ The Board/CEO decisions around the former HPD ought to have been made with the timeframe around his replacement in mind.

the level of information which flowed to the HPD, the CEO and the Board; and impeded appropriate accountability for unacceptable behaviour. The head coach, and some of the other coaches and HPSNZ consultants ought to have had a more positive influence on the situation. Some tried and were unable.

3.54 That situation gives rise to a comment about the broader capability and qualifications required to be a modern high-performance coach. It has been a strong theme in my interviews that the qualifications required to be such a coach are far more complex and exacting than simply being a former successful track cyclist. Relevant coaching experience, qualifications, and leadership and collaboration ability are essential.⁵⁹ A significant number of members of the Programme alleged the recruitment of certain personnel was unprincipled.

3.55 The seventh point relates to the time spent travelling and its impact on the ability to deal with cultural issues. It was submitted that:

[A significant factor] in the challenges faced by Cycling New Zealand in dealing with the alleged issues, is the notable time that the high performance team spends off-shore. Due to racing and training requirements athletes and coaches spend significant time overseas often in small groups...

With these small travelling groups the broader visibility around culture and behaviour can be limited particularly if there is a hesitancy for these team members to share concerns to HP or organisational leadership. Additionally if information is passed through to leadership from these trips it can be difficult to verify the validity of such information while also providing appropriate duty of care and natural justice for team members subject to the allegations.

3.56 I understand that point and agree that may have been a contributing feature.

3.57 One final point was raised by interviewees and expressed in the draft report. It is the question of whether the HPSNZ/NSO relationship, in particular the investment model or system and the focus on medals, can lead to less priority being given to issues related to athlete welfare (such as identified above). Some interviewees strongly suggested this was the case and it was identified as a possible issue in some of the post Rio review documents discussed below.

3.58 An NSO is funded on its past performance, its future potential, the quality of its High Performance Programme and campaign and individual sport contexts.⁶⁰ In short, has it won medals at pinnacle events in the past and is this likely to continue based on the quality of its programme. The HPSNZ funding for the Rio Olympic cycle was a

⁵⁹ I recommend that Cycling NZ review its recruitment approach for its coaches and the credentials of its coaching team to ensure that all are fit for purpose. I note that CNZ has recently undertaken an independent review of its coach recruitment process and positive feedback was received.

⁶⁰ <https://hpsnz.org.nz/what-we-do/investment-and-partnerships/>

base of \$4.7m per annum.⁶¹ After the performance at Rio, the base funding was reduced to \$4.2m by HPSNZ.

3.59 Because of this investment model, it was expressed to me that there is pressure, be it conscious or unconscious, to act in a way that gives the organisation the best chance of producing medals (so that funding can be maximised). This could lead to an environment where negative behaviour is tolerated and overlooked in the short term.

3.60 The Independent Review Panel into UK Cycling found:

The central pursuit of medals and derived National Lottery funding from UK Sport meant that the addressing of cultural and behavioural issues in the World Class Programme which were known since late 2012 was not prioritised.

3.61 I put this proposition to the CEO of CNZ. That is, there could have been a view that the Coach was too important to the success of the organisation (in terms of medals) and therefore it may be easier to turn a blind eye to such behaviour. The contention was strongly denied. I accept that neither the CEO or the Board consciously refrained from acting with this in mind. Their actions from May 2018 support the contrary conclusion.

3.62 The impression I obtained from my review (including the comments of many interviewed) was that the importance of the Coach, the sprint team and the likely medals represented, made dealing with the issues identified here more difficult and may have resulted in lesser priority being given to confronting them.

3.63 I accept the feedback, however, that I cannot draw any further conclusion as to the impact of the investment model generally in respect to this NSO or others. As was submitted to me, I am not able to draw broader conclusions from a narrowly focused investigation into a specific problem within one area of one sport.⁶² The inclusion of the criteria of the "Quality of the HP Programme" requires assessment of matters including culture and welfare, and therefore matters such as athlete welfare will be considered in the overall assessment of funding. I have received strong submissions and evidence to the effect that the NZ system is a good one and compares well internationally in terms of athlete welfare and retention.

3.64 NZ performance on the world stage is and has been impressive, both in cycling and elsewhere. I was provided with compelling evidence of this. Examples I was given include:

⁶¹ Total funding was approximately \$7m once support services, payments to athletes and other funding is considered.

⁶² I note, however the findings in the NZ Football context which suggest player welfare was not given sufficient focus.

- a) the NZ team that competed at the Gold Coast Commonwealth Games finished with the highest ever away Games results;
- b) In 2016, New Zealand was the only small nation (i.e. less than 10 million people) in the world capable of winning Olympic medals across nine sports, demonstrating a strong systems approach; and
- c) Another measure of effectiveness of the high performance system is the relative change in medals and gold medals won in 2012 compared to 2016. Analysis of the top 20 nations places New Zealand 4th in the world for overall system gain. This directly compares with large international systems with significantly greater resources, being in order, Japan, United States of America and France.

3.65 In my view, however, HPSNZ (and Sport NZ where necessary) should review and reflect on whether the relationship settings and responsibilities (discussed further below) provide adequate assurance that athlete welfare is appropriately protected. The information received and reviewed by me (including from CNZ and HPSNZ) suggest that there is a risk that current settings may not give sufficient priority to athlete and participant welfare.

THE RULES, POLICIES, PROCEDURES, CODES OF CONDUCT AND SYSTEMS OF CYCLING NZ – WERE THEY BREACHED, WERE THEY ADEQUATE?

TERMS 2.5

- 4.1 Much of the discussion above is relevant under this heading. Extracts of the relevant rules, policies and codes of conduct are attached to this report as **Appendix B**.
- 4.2 I have identified instances where in my view the existing rules or codes were breached. I intend to refer some instances which in my view should be considered and (if appropriate) dealt with.
- 4.3 In broad summary, I do not believe the Rules, Policies and Code of Conduct of CNZ were adequate to protect athletes, coaches and other personnel.
- 4.4 In particular there was no clear, practical and operable policy and procedure to escalate issues of bullying or harassment or other potential misconduct, on a confidential basis, with the assurance that such issues would get proper consideration and (where necessary) investigation and action.
- 4.5 The WorkSafe guidance referred to in this review is a sensible place to start for a small organisation like CNZ.
- 4.6 There are plenty of sport specific resources, although I have not done a comprehensive survey.
- 4.7 The IOC Toolkit in respect to harassment and abuse states at page 44:
- Fear of reporting has been found to be a real concern within numerous studies. Therefore, having a good reporting mechanism and procedure is very important.
- 4.8 The minimum requirement is to establish a reporting procedure, specify the various channels and persons who should receive a report and what information is required.
- 4.9 The IOC state that good practice includes the following key features:
- Anonymity should be offered;
 - The reporting procedure should be easy to use and understand; and
 - The reporting procedure should be accessible and widely communicated, including informing the reporter where the report will go to.
- 4.10 In addition to these requirements, the IOC state best practice involves a reporting system managed by someone at arm's length to the organisation.

4.11 The CNZ Operations Policy states in relation to harassment and bullying:

Breaches of these responsibilities and policy will be investigated and dealt with. Any employee found to be in breach of these policies may be subject to disciplinary action including dismissal.

4.12 I was not provided with anything further which expanded on those minimum requirements. On that basis, the CNZ position is lacking.

4.13 The same is true with wider issues of misconduct such as drinking or inappropriate relationships between a coach and athlete. Whilst there were prohibitions, there does not appear to have been a policy, procedure or process which was in place to deal with such issues or allegations.

4.14 No one interviewed by me pointed to such a policy, procedure or process, other than a general response that matters could be escalated to the Head Coach or the HPD and finally the CEO.

4.15 I have noted that the lack of human resource capability in CNZ is concerning. The CEO should not handle such matters at the first instance and certainly not without expert support.

4.16 The primary problem was not because of a lack of rules or clarity, it was with the culture of the Programme including the lack of accountability and the reluctance to raise such issues. In part that resulted from not having confidence in leadership to take the necessary action.

4.17 The rules, policies and codes of conduct of CNZ ought to be reviewed and where necessary augmented and improved in particular to comprehensively deal with issues relating to the conduct and welfare identified in this review.

4.18 I understand the Sport NZ review of Elite Athletes' Rights and Welfare may focus on these issues as well. Sport NZ's wider Sport Integrity Review may also be relevant. In addition, HPSNZ has moved to assist in this area, by instituting what are known as NSO High Performance Health Checks (described further below).

4.19 HPSNZ and CNZ submit that significant effort has gone into improving the capability of CNZ over the last five or so years. In September 2013, a confidential report from Martin Jenkins noted that CNZ was an organisation in crisis with severely limited capability. In the ten years leading to that point, CNZ had grown significantly (more than 800%) with the Programme being responsible for much of the funding and expenditure growth.

4.20 Shortly after that report, CNZ centralised its operations to the Home of Cycling at the Avanti Velodrome at Cambridge. The current CEO was appointed and there was a conscious focus on the Board and the CEO having more involvement in and oversight of the Programme (given its importance).

- 4.21 HPSNZ emphasised that substantial investment has been made by the Sport NZ group into CNZ, alongside high-performance funding. The aim of this was to assist in ensuring that CNZ was a stable, sustainable and capable organisation, outcomes which were set following the Martin Jenkins review in 2013. Such support included funding towards the NZ Governance Mark, operational funding in the 2016/2017 year and the other support discussed above.
- 4.22 Accepting that considerable investment and support have been provided, it does not appear to have addressed the process and capability gaps which are identified here. I remain concerned that CNZ may not be fully capable of dealing with issues of athlete welfare and holding people to account for poor behaviour.

REFERRALS WHICH MAY GIVE RISE TO FURTHER ACTION

TERMS 2.6

- 5.1 During the Review information was revealed to me that suggested that others may have breached agreements or codes of conduct. As these instances in theory may result in consideration of disciplinary procedures I will not describe them in this Report.
- 5.2 In summary, I will deal with this part of the Review in confidence through the appropriate channels specified in the Terms.
- 5.3 I do so in part to ensure that there is accountability for conduct which was distressing and/or harmful to the Programme. The primary goal in doing so, however, is to ensure that if appropriate, persons involved are educated, counselled and one hopes improved by any process that follows. That is in recognition of the historic nature of the particular incidents I am referring.

HPSNZ

TERMS 2.8 - 2.14

- 6.1 In June 2010, an increase in funding was announced for high performance sport in New Zealand with the stated aim being “to ensure that New Zealand is consistently one of the most successful sporting nations in the world”.⁶³
- 6.2 In 2011, HPSNZ was established as a Crown Entity Subsidiary out of a merger between the NZ Academy of Sport North Island, NZ Academy of Sport South Island and the SPARC high performance unit. HPSNZ now leads the high performance sports system in New Zealand and receives approximately \$60 million of crown funding per year.⁶⁴ Since its inception, HPSNZ’s guiding statement has been to be performance driven, athlete focused and coach led. It implements its vision by partnering with NSO’s and allocating resources to both NSO’s and athletes.
- 6.3 As part of the strategy to deliver world leading support to impact CNZ, HPSNZ invested many millions of dollars in the Programme over the relevant period. This investment was to support a systems-based approach (athlete, coach, facilities, innovation, talent development) which is said to provide the best opportunity for athletes to succeed on the world stage.
- 6.4 As stated in the Terms, HPSNZ has a role in creating a sustainable winning culture across the high performance system which both respects the rights of, and satisfies the duty of care to, all athletes to ensure they can perform to their potential.
- 6.5 The relationship between the Sport NZ group (including HPSNZ) and CNZ is governed by a relationship agreement (dated September 2013). The relationship is described as one of partnership. That partnership has principles which govern and guide each party. Importantly, one of those principles is:
- Sport NZ respecting [CNZ’s] independence and autonomy, and recognising that [CNZ] has obligations to other stakeholders (such as members, affiliates, investors and funders).
- 6.6 In September 2013 a Martin Jenkins review recommended that Sport NZ clarify its primary role with CNZ as funder, with service provider and advisor roles being secondary. Sport NZ funding for non-HP activities was to be based on capability development, increased participation and transition (in the way recommended by the review).

⁶³ <https://hpsnz.org.nz/about-us/>

⁶⁴ Sport NZ Group, *Statement of Performance Expectations, 1 July 2017 – 30 June 2018*, page 15.

- 6.7 The review stated that much stronger governance understanding and ownership of the Programme was required from CNZ and recommended the CNZ Board expressly assumed accountability for the Programme. The Board were to work with the HPD and HPSNZ to develop a shared view on the direction and execution of the Programme.
- 6.8 The recommendations were accepted and implemented. Thus, the basis of HPSNZ's involvement with the CNZ Programme was intended to be one of partnership but one which respected the independence and autonomy of CNZ.
- 6.9 This in turn influences the perspective of accountability for the sort of behaviour disclosed in this review. HPSNZ submit, and I accept, that primary accountability lies with CNZ. Despite this, HPSNZ as a "partner" must accept (as it does) some responsibility for ensuring that CNZ is able to meet the terms of its agreement with HPSNZ (be it funding or relationship). It is not possible to talk in terms of "partnership"⁶⁵ whilst rejecting some responsibility (and HPSNZ does not do so). The exact scope of that responsibility and the extent to which HPSNZ should become involved in issues involving athlete welfare is something which needs broader consideration than I am able to do in the context of this review.
- 6.10 Turning to the specific events in question, it is clear that despite the immersion of HPSNZ staff in the Programme, HPSNZ leadership did not have comprehensive knowledge of its progress in the lead up to Rio, nor of the problems which became evident. HPSNZ as a whole, however, knew enough to have reacted more directly and decisively at an earlier stage.

Debrief Process

- 6.11 Following the Rio Olympics, a comprehensive debrief process was undertaken by HPSNZ. This was normal practice for an NSO after a pinnacle event. The Programme aimed for five medals at the Rio Olympics while only producing one.
- 6.12 The debrief process became complex and disordered in its execution. I consider that the primary issue was a lack of coherence and coordination, leading to fractured and incomplete information.
- 6.13 Initially the Debrief process was going to be led by the CNZ HPD with assistance from one HPSNZ employee. Teams within the Programme would be assigned an interviewer who would have a 60-90 minute interview with coaches and athletes to ask questions about performance and preparation for the Rio Olympics. The objective was to determine:

⁶⁵ For example: the current Statement of Intent of the Sport NZ group identifies strategic priorities, including working in partnership to increase the stability and high-performance capability of NSO's, and partnering with NSOs to build world-leading coaching and HP leadership.

- What worked;
 - What did not work well;
 - What was learnt; and
 - What CNZ needed to keep doing, start doing and stop doing.
- 6.14 Because of the events at and leading up to Rio the CEO informed the HPD on 24 August 2016 that he wanted to take a “full and active part in all facets of the Rio debrief”.
- 6.15 This expanded and complicated the debrief and in doing so involved further staff from HPSNZ and CNZ.
- 6.16 One part of the debrief was the Knowledge Rio Survey. This was a survey based debrief with the aim of summarising patterns across responses to support further inquiry and planning for the next Olympic cycle. The track cycling group at Rio consisted of 27 athletes, coaches and support staff with 22 of them providing information (an 81% response rate)
- 6.17 The Knowledge Rio Survey identified a wide variety of consistent enablers and barriers to performance along with various factors that the Programme should keep, stop and start doing. Due to the nature of this debrief specific events were not uncovered, however, the following observations were drawn from the data:
- With the exception of 3 athletes, pre-Olympic preparation either met or was below expectations;
 - There was a poor team environment with low accountability from staff and athletes; and
 - There was under-utilisation of skilled support staff.
- 6.18 As well as the Knowledge Rio Athlete Survey, there were three lead reviewers from HPSNZ involved in the Programme debrief. One took an organisational view of the environment and the culture within the Programme (the “Key Themes Reviewer”); one interviewing and reporting on the endurance team (“Endurance Team Reviewer”) and one interviewing and reporting on the sprint team (“Sprint Team Reviewer”). Together I refer to them as the HPSNZ Reviewers.
- 6.19 Parts of the process remained unaltered, that is, interviewers were to have conversations with relevant stakeholders, which they would record. These recordings were then uploaded to a Dropbox ⁶⁶ so that they could be transcribed by a transcription service.⁶⁷ The transcript of the recording was then used to make a summary of the interview. This summary was then checked with the relevant individual to ensure that it accurately reflected their views.

⁶⁶ <https://www.dropbox.com>

⁶⁷ <https://transcribeme.com>

6.20 Overall, HPSNZ received a significant amount of information in the Rio Debrief. There were interviews of 53 individuals (with, as described, each interview resulting in a transcript and then a summary of that transcript).

Allegations during Debrief

- 6.21 The HPSNZ Reviewers were interviewed by me. In summary, they did not appear to receive information with the level of detail as the findings contained in this report. Many of the themes, however, of poor culture, lack of accountability and misuse of alcohol were reflected and reported.
- 6.22 Less serious instances of inappropriate behaviour were recorded. One of the HPSNZ reviewers received information from a CNZ coach that he believed there was bullying between athletes. As it is portrayed in the interview summary documents, this does not appear to be a serious case of bullying.
- 6.23 The female athlete who was pressured to lie (and in my view bullied) does not disclose this in her interview. A number of specific references in some interviews to the issues involved in this review (bullying, drinking, lack of consequences for poor behaviour, an old boys club, negative attitudes towards women) were not fully reflected in the summary reports produced.
- 6.24 I will comment on this further, but in summary the review reporting process did not reveal in significant detail the problems which have now emerged. Again, there are a combination of reasons for that.
- 6.25 First, there was a strong view that assurances of confidentiality could not be completely relied on. One athlete commented to me that assurances of confidentiality in the Programme carried no weight with him. Second and related, there was a view that nothing positive would come from revealing specifics, particularly in relation to those who could influence athlete selection. Third and again related, a culture existed where information about poor behaviour of certain personnel was not raised formally.
- 6.26 Each HPSNZ Reviewer produced a report at different times.
- 6.27 The Key Themes Report (marked "Interim")⁶⁸ was given to the CEO of CNZ on 22 October 2016. It was discussed with the CEO and revised for the purposes of the CNZ Board meeting. The following day, the Key Themes Reviewer sent the report to a senior employee of HPSNZ who in turn sent it to the former HPSNZ CEO, noting "report attached.....clearly soft and poor leadership!".

⁶⁸ This report was not finalised and HPSNZ advised that it was not provided to its Board.

6.28 The CNZ HPD was given the report the day before it was discussed at a CNZ board meeting⁶⁹ and was not able to have input into the issues raised in it.

6.29 The Key Themes Report identified three key issues:

1. Culture

The existing culture is not compatible with a professionally created, implemented and managed high – performance plan. A lack of trust, respect and underpinning values has created rifts within the organisation.

2. Leadership & Management

The current structure of HP was described as ‘disjointed and clunky’ with no one really connecting the layers of the organisation or ensuring that the dynamics of the people and teams remained functional and positive.

3. Planning & Preparation

Within the four-year cycle, decisions made within HP were not visibly aligned to the plan, which led to an indifference on the part of key individuals in terms of clarity, accountability and decision making.

6.30 The body of the report highlighted themes and concerns which are evident in this Report, including:

- i) The existing culture was poor and was not compatible with a professional high-performance programme (reference was made to the “Old Boys Club”);
- ii) A lack of trust, respect, integrity and underpinning values;
- iii) An environment of fear with those who do not conform excluded or pushed out;
- iv) A lack of consequences for poor behaviour (with excessive drinking from the coaching group as an example);
- v) References to bullying amongst athletes;
- vi) “Coach led” was interpreted as “my way or the highway”, which resulted in the creation of a toxic relationship between many of the staff;
- vii) Staff welfare was a concern, including stress and overloading. An “us and them” mentality had developed between CNZ and HPSNZ.

6.31 The Report recommended that CNZ:

- i) Must have honest and open discussions about the present and the future changes needed in the organisation. The discussions must produce a unified, cohesive, and collaborative strategy for success;
- ii) CNZ is recommended to institute a culture and change management process to drive the required change in the organisation;
- iii) Part of that culture change needs to include the development of transformational and capable leaders;

⁶⁹ 25 October 2016.

- iv) The HPP must consider including key stakeholders and include;
 - a. A more open communication flow between all staff.
 - b. A positive and productive daily training environment owned by the collective whole.

6.32 The Key Themes Report was also sent to the CEO of Sport New Zealand on 26 October 2016 and again on 15 June 2017 (noting that it was subject to strict confidentiality requirements). The strict confidentiality meant that the report was not circulated beyond CNZ and the CEO's of Sport NZ and HPSNZ.

6.33 The Endurance Team Reviewer's report (undated) was sent to the CEO of CNZ and the other HPSNZ Reviewers on 22 November 2016. On 5 December 2016, the report was sent to the CNZ Head Coach.⁷⁰ The athlete summaries on which this report was based identified the following matters:

- i) One person described the team in terms of the selection process as unsupportive and "dog eat dog". They also identified a potentially unhealthy culture in relation to being over worked;
- ii) Another noted that everyone was too scared to trust and work collaboratively and that coaches don't want to be challenged on their planning or ideas;
- iii) One individual felt their opinion was not utilised or respected;
- iv) Another observed that the coaches do what they want with no repercussions (old boys club) and they also do not consider there to be any values in the Programme;
- v) One individual observed the lack of trust between athletes and that staff should not drink in front of athletes and never to excess; and
- vi) Another observed communication was often lacking and/or late.

6.34 This report identified, among other things:

A combination of factors coupled with poor decision making and alcohol led to a serious health issue in Rio.

A combination of the factors expressed by people interviewed has resulted in the majority of the athletes having lost trust and respect for the [person]. [not the Coach]

There is a perception that there is an "old boys club" within the ... Programme, in addition to that perceived in the wider CNZ HP Programme. This leads to perceived favouritism and "mates looking after mates".

The culture within the ... team was variously described as being disjointed, split, dog eat dog, lacking cohesion, with some riders doing their own thing. The lack of trust extends to some of the athletes not trusting one another, with people talking about each other behind their backs.

There were a number of references to the broader Programme Culture being very dysfunctional. Characterised by a lack of trust and respect between support staff and coaches leading to a sense of not being valued and a lack of collaboration.

⁷⁰ While this report was not dated, it was completed on 22 November 2016. Prior to that date, a draft report was circulated to another HPSNZ reviewer for feedback. This report was also sent in confidence to the Reviewer's manager at HPSNZ for feedback on 29 November.

A lack of trust and respect between coaching and support staff has led to people failing to work together effectively as a team.

6.35 The Sprint Team Reviewer's report was also circulated to the CNZ CEO on 22 November.⁷¹ The next day it was sent to the relevant coaches.

6.36 This report reflected material from the athlete's summary transcripts in such a way that did not give prominence to the issues that this review has revealed.⁷² The two quotes on the first page are:

"I think ... defined clear performance goals, they had a clear time (performance objective in Rio) and they achieved their time in the team sprint. They knew exactly what they needed to do. I think that's a really important thing they do well"

And

"I believe we executed the fastest time that we were capable of...we were all there in the moment to do it for each other... we all stepped up"

6.37 The report goes on to say:

"this campaign is best summed up as a team with two sides. One side containing the coach and selected athletes (the inner tight team), is clear and alignment on what matters to performance, there is trust, faith and belief in the coach 'we were able to have an aligned vision and trajectory'

The other side, containing the support staff and non-selected athletes, there was ineffective communication, uncertainty about the plan and limited collaboration. There were limited avenues for challenging conversations to occur, for this group to feel they could influence performance. The support staff felt their skills were underutilised, that their opinion wasn't valued and that the coach was micromanaging them and their expertise, to the degree that it negatively impacted performance.

"Coach led mantra has been miss interpreted (46%) This also includes the ability for the coached to step back from time to time [sic]

"An environment where people don't feel they can give honest feedback. Team member ' I think that when people are too honest, it will impede them moving forward...are scared of the consequences.'

6.38 The report does not highlight the behaviours reported in the underlying interviews and their summaries. It concentrates on the direct performance related matters. This has some significance, because it is the summaries of these underlying interviews which ultimately were leaked to the media and contributed to the commissioning of this review.

6.39 There was little mention of the following factors which were identified by athletes and staff in the Sprint Team:

a) A lack of accountability;

⁷¹ The Sprint Team Reviewer asked the CEO if the report could be forwarded on to the relevant coaches. The next day, the CEO confirmed it could be sent to the coaches concerned.

⁷² I accept his submission to me that this was not deliberate on his behalf, rather it arose from the specific focus and circumstances of his review.

- b) Bullying between athletes;⁷³
- c) Significant stress felt by the coaches;
- d) There being no consequences for "shit behaviour";
- e) A boozy drinking culture;
- f) An old boys club that is detrimental to the Programme;
- g) Attitudes towards women needing to be addressed; or
- h) A suggestion an ethics committee may be needed.

6.40 These omissions left the report providing a materially different impression. The reviewer explained the scope and nature of the debrief process, his role in it and his methodology in completing it⁷⁴ meant these matters did not get emphasised. In addition, the reviewer did not have detailed guidance as to what matters must be reflected in such a report – it was left to his discretion. The matters which are the subject of this Review were not "front and centre" for the reviewer. In hindsight, it was regrettable that they did not get greater prominence.

6.41 Following the finalisation of this report, there was a "whiteboard session" with the team concerned. The Sprint Team Reviewer was in attendance.

6.42 There were questions raised about the effectiveness of this part of the review process. In essence, the criticism was that feedback was not well received or accepted by these coaches. Three athletes in this team reported to me that in situations such as these it was best to not talk or be as diplomatic as possible to avoid the chance of being marginalised by the Coach and or coaching group.

Confidential information security

6.43 During the debrief process, the accepted practice was that no one in the Programme would be sent the summary for someone else.⁷⁵ This is consistent with clause 2.4 in the Athlete Performance Support Guidelines reproduced at Appendix D. The interview transcripts and the summary of the interview produced by the interviewer were intended to be confidential.

6.44 There was a breach of this practice as part of the debrief. The Sprint Team Reviewer sent the Coach six athlete/coach interview summaries on 31 October and 1 November (and one further summary of a team mechanic). The following day, the HPD told the reviewer not to send the summaries to the Coach. The reviewer then told me he then spoke to the Coach and asked him not to read the summaries and delete them (the reviewer said the Coach confirmed that he would).

⁷³ Although this appeared to be less serious than I have detailed in this Report. The Reviewer did not get the detailed information I have received nor was it completely consistent with that information.

⁷⁴ The methodology was provided to me and involved highlighting those themes which had sufficient frequency of occurrence (and the themes such as bullying did not have such frequency).

⁷⁵ However, it is noted that there was no policy document on a how a Debrief should be undertaken. The HPD emphasised the importance of confidentiality to the success of the process in an email of 12 September 2016 to participants including the Reviewers.

- 6.45 The Sprint Team Reviewer explained that this was an honest mistake. He thought the Coach needed to receive the summaries and that it was business as usual to send him them.
- 6.46 The debrief procedure was set out in a document provided by the Reviewer to me. It contained the following:
- record conversations, write up notes, create 'summary report' around key learnings. 'Summary report' handed back to coach by 7 October.
- 6.47 The Reviewer said that he interpreted the words "Summary report" to mean the summary of the athlete's transcripts. The Reviewer said this was consistent with how the Coach had asked him to operate in the past and aligned with the coach being the leader of the campaign including the Reviewer's role as a consultant within it. The Reviewer emphasised he was operating in good faith.
- 6.48 I do not accept that this was reasonable or acceptable in the circumstances. The Reviewer acknowledged it was an error.⁷⁶ This appeared to be the only situation where an individual involved in the Programme was sent a transcript summary relating to someone else. All others interviewed on the topic were clear that an interview summary like this ought not be shared with others.
- 6.49 I was told by one witness that she overheard conversations between the Coach and the Reviewer, where the Coach repeatedly pressured the Reviewer to make available the summaries. The Reviewer denied this was the case and as the Coach has chosen not to speak to me and has not commented on this issue, I am unable to make a finding.
- 6.50 The Reviewer and the Coach are perceived by many I have interviewed to be friends as well as having a professional relationship. The risk is therefore that personal considerations could be perceived to have influenced choices made. I am not concluding that occurred here – I am not able to determine that.⁷⁷ The Reviewer stated to me the relationship with the Coach was a professional one and at no time did he compromise his responsibility to the campaign or those in it by reasons of any relationship he had with the Coach. Irrespective, confidentiality ought to have been maintained by the reviewer and the process that was directed (and all others understood) ought to have been followed.
- 6.51 The principles of the debrief process were confidentiality and integrity. That is, participants must know what they say will be kept confidential so that they can respond openly and meaningfully to questions asked of them. Integrity means that

⁷⁶ As above, the HPD emphasised the importance of confidentiality in an email of 12 September 2016 which went to the Reviewer. The Reviewer stated that he must have overlooked that part of the email and relied on his previous practice.

⁷⁷ For example, the Coach has not commented on this and I am left with conflicting accounts.

the sentiments expressed are accurately reflected through the process from interview to interview summary to summary report.

- 6.52 There were two errors which undermined the quality of this aspect of the debrief process:
- a) Confidentiality was not maintained; and
 - b) Relevant factors from the interviews were not translated into the final report.
- 6.53 The media published phrases which were said to have come from “transcript” documents. In particular:⁷⁸
- a) “no consequence for shit behaviour”;
 - b) “a lack of accountability”; and
 - c) “inappropriate boozy drinking culture”.
- 6.54 Those quotes in the media are very similar to those in the summaries. The quotes appear to come from two of the six summaries that were sent to the Coach.
- 6.55 The Coach did not delete or destroy the summaries that were sent to him despite assuring the Reviewer he would. They remained in his home in Cambridge until May 2018 when a person lawfully in the house obtained access to them.
- 6.56 That person sent photographs of the interview summaries to a TVNZ reporter on 31 May 2018. Thus, the flow of the interview summaries was from the HPSNZ Reviewer to the Coach then through a person not in the Programme (but close to it) to the media.
- 6.57 Whilst I am critical of the leaking of the confidential summaries, some hold another view that without those actions there would not have been the impetus to confront and challenge the sort of behaviour identified in them. The situation gives further impetus to the need for a clear, practical and confidential method for escalating and dealing with athlete welfare issues such as these.
- 6.58 The situation and consequences are full of irony. The Coach was provided with the athlete interview summaries, which contained the material above, and yet CNZ or HPSNZ did not get some of that material. The statements emerged via the media, leading to this review. The Reviewer considered the Coach should have the interview summaries but for reasons explained did not reproduce some of the negative aspects in his summary report.
- 6.59 The Sprint Team Reviewer noted that there is no HPSNZ policy with respect to the debrief process. My understanding is that the debrief process has been standardised

⁷⁸ https://www.nzherald.co.nz/sport/news/article.cfm?c_id=4&objectid=12062770 retrieved on 28 July at 2:54 pm; <https://www.tvnz.co.nz/one-news/sport/other/exclusive-former-cycling-nz-coach-anthony-peden-had-access-deeply-personal-and-damning-confidential-athlete-interviews-high-performance-sport> retrieved on 28 July at 3:04 pm.

and developed since it was first used in 2012, but that there remains a lack of formal settled process and policy documents. I recommend that is remedied.

Additional CNZ Review Document

6.60 HPSNZ also received a document authored by the CEO and HPD of CNZ titled, Cycling New Zealand HP Programme Performance Review 2016.⁷⁹

6.61 The document was a meticulous account, covering a wide range of factors affecting performance and tellingly included a statement to the effect that:

[there was a] focus on results over people that was to the detriment of the system and well-being.

6.62 Other factors including the old boys club and coach health were also noted. Similar challenges as set out in the Key Themes Review document were reflected.

6.63 This report was sent to HPSNZ on 4 November 2016, so did not have the benefit of the Endurance Team Reviewer's report or the Sprint Team Reviewer's report (but draft overviews were provided to CNZ so were able to be incorporated).

6.64 As noted, the overall review process was therefore complex, unclear and not coherent. There was much uncertainty as to who was meant to see what information and when. The Board of CNZ do not appear to have received all relevant information before making significant decisions as discussed above. The Board of HPSNZ do not seem to have received any of the HPSNZ reviews nor does it appear they were appraised of the significant issues identified in them.

6.65 Collectively HPSNZ was aware of significant cultural and behavioural issues in the Programme. It is also clear that some of the details identified in this review were not highlighted sufficiently either by those interviewed or by those preparing the reports.

6.66 HPSNZ leadership did not have a comprehensive view of the breadth and depth of the problems within the Programme. There was a lack of clarity of communication and escalation (including to the Board) so that action could be taken. Given the balance between partnership and respect for autonomy discussed above, the exact response would have been a matter for the respective Boards and CEO's, but what ultimately occurred demonstrated that it could have been swift and effective.

Cycling Case Study

6.67 Following the Rio Debrief process, the former CEO of HPSNZ commissioned a case study into the CNZ Programme. The purpose of the case study was to examine the operational effectiveness and efficiency of the Programme and the associated performance of HPSNZ (which had been questioned following the Rio Olympics)

⁷⁹ This document was undated except for "2016" appearing in the title. Again, for completeness and without criticism, I observe that it was not provided to the Board of HPSNZ.

6.68 The case study also stated that the review team was to make recommendations that HPSNZ and CNZ were to adopt in the next cycle and beyond:⁸⁰ The Summary of the Case Study records:⁸¹

The scrutiny of events emerging from the case study highlighted that HPSNZ contributed significantly to the outcome of only one medal in RIO, which was a less than satisfactory return on investment.

...

HPSNZ did not operate at an optimal level during the cycle with ebbs and flows of inconsistent application of partnership and effective interaction with CNZ resulting in a breakdown in communication and quality relationships.

...

Essentially a lack of a CNZ operational plan detailing the 'What' and 'Who' was not clear. We simply spent four years making assumptions that we were enabling performance.

6.69 It also identified the following issues, among others, at 5.1 and 5.2:

- A lack of documented processes for the operation of the HPSNZ teams;
- Lack of clarity around HPSNZ roles and reporting lines;
- A lack of mechanism for escalating risk;
- A lack of effective processes for the evaluation of the performance of HPSNZ;
- Multiple channels of interaction between HPSNZ and CNZ result in lack of clarity in reporting/escalation lines;

6.70 The HPSNZ board minutes of 5 July 2017 record that the Cycling NZ Case study was taken as read, however, the document received by the Board was a summary of the Case Study only. The essence of the Case Study recommendations were put to the Board for noting. The key conclusion in both the full document and the summary was:

that HPSNZ did not operate at an optimal level during the cycle with inconsistent application of partnership and ineffective interaction with CNZ contributing to a breakdown in communication and quality relationships.

6.71 The recommendations made in the Case Study report remain a work in progress.⁸² HPSNZ and CNZ submit that suggested improvements are being implemented and evidence of this can be seen in the investment recommendations considered and adopted by the HPSNZ Board in December 2017. In addition significant progress has been reported back to HPSNZ including as to culture and welfare. That is consistent with some of the comments I received.

6.72 The mechanism for escalating risk and clarity concerning the level of involvement HPSNZ should have in an NSO remain to be clarified in my view.

⁸⁰ High Performance Sport New Zealand Review, A Strategic Review of HPSNZ's role in the Cycling NZ HP Review 2012-2106, page 2.

⁸¹ Ibid, page 3.

⁸² I note that in the time period following the Board consideration of the case study the CEO of HPSNZ changed (former CEO left end August 2017, new CEO commenced January 2018) as did the HPD of CNZ, which explains a lack of progress on the recommendations.

- 6.73 The case study process revealed information known by HPSNZ yet not disclosed to CNZ on the basis of confidentiality. As stated above, the CEO of CNZ recorded on 1 March 2017 that HPSNZ knew the Coach had an issue with alcohol yet they did not inform him of it. As discussed, information did not flow well the other way.
- 6.74 At the end of both the Rio Debrief process and the HPSNZ cycling case study, HPSNZ was in possession of a significant amount of information to suggest that the Programme was not operating optimally and that HPSNZ's involvement and influence on the Programme could have been improved.
- 6.75 Commissioning and responding to the CNZ Case Study was a reasonable and rational step. However, after the CNZ case study (or a summary) was returned to the executive and board level of HPSNZ, it is not clear to me that the response was sufficient or adequate. For example, whilst reports were positive as noted, the remedial steps do not seem to have dealt with the behavioural issues which have become evident in this Review.
- 6.76 Again the issue arises as to clarity regarding the extent and scope of HPSNZ's obligations and responsibilities with respect to the quality of the HP programme in an NSO. Some interviewees suggested a lack of accountability by HPSNZ as an organisation. It was suggested that if they are responsible for positive performance outcomes, it follows that they are also responsible for the reverse. The precise responsibility of HPSNZ in respect to the quality of the Programme is one which requires broader consideration in a different setting.
- 6.77 HPSNZ has moved recently to improve the process and mechanisms for escalating issues and risks within NSOs. In particular by instituting regular NSO High Performance Health Checks. These are comprehensive analyses of the HP environment of the NSO with specific sections on athlete welfare and athlete well-being. The Health Check for CNZ is yet to be completed.
- 6.78 The precise knowledge of matters evident in this review within HPSNZ (and when) is difficult to pinpoint. While HPSNZ employees were aware of the incident in Bordeaux during the Rio Debrief, this appeared to be an isolated incident. Further, the repercussions from those events, as they related to the employment of the staff involved, were dealt with by CNZ. HPSNZ viewed this as solely the responsibility of CNZ.
- 6.79 The rumours that a coach was having a relationship with an athlete were widely circulated. As mentioned, many of the interviewees told me that "everyone knew" or words to that effect. When asked, some HPSNZ employees could not recall where or when they had heard the rumours from.
- 6.80 Two HPSNZ employees directly confronted the Coach and the athlete about the rumours. One employee did this in late 2017 while the other in early 2018. The

employees could not recall the exact dates. To both employees, the Coach and the athlete questioned the appropriateness of the inquiry or denied the existence of any relationship.

- 6.81 Given the nature of the rumour, and with the benefit of hindsight, more needed to be done to ensure that something which could have a major negative impact on the HPSNZ investment in the Programme was properly investigated and resolved (one way or the other).
- 6.82 In early 2018 a CNZ staff member called an HPSNZ employee to report that they were aware of rumours of an alleged relationship between a coach and an athlete. Around the same time an HPSNZ staff member informed the same HPSNZ employee about the possible existence of a relationship between a coach and an athlete. The HPSNZ employee explored the basis for the rumours and found these to be mainly circumstantial (for example, the athlete being seen near the Coach's house late at night).
- 6.83 In any event, soon after receiving this information the HPSNZ employee went to see the CEO of CNZ to inform him of the rumours. The CEO responded by saying that an internal inquiry investigating the rumours was about to commence.
- 6.84 On 1 May 2018 a senior HPSNZ employee emailed the HPSNZ CEO and another HPSNZ staff member saying that he had become aware that there may be a relationship occurring between a track cycling coach and an athlete. The CEO of HPSNZ investigated matters internally before calling the CEO of CNZ.
- 6.85 Both CEO's agreed to meet at the New Zealand Olympic Committee AGM on 10 May to discuss the issue. In summary, the HPSNZ CEO inquired into the CNZ's CEO proposed course of action; his response was that he was going to investigate the matter. It was also decided that HPSNZ would be kept updated throughout. Shortly after the Coach resigned from his position with CNZ. Any potential investigation was pre-empted by this.
- 6.86 In summary, at least five HPSNZ employees knew about rumours regarding the relationship between a coach and an athlete at the following times:
- a) Second half of 2017, when both the athlete and the coach were confronted;
 - b) Early 2018, again both the athlete and the coach were confronted;
 - c) Early 2018, escalation to a senior employee within HPSNZ;
 - d) Early 2018, file notes made followed by discussion with CNZ CEO; and
 - e) On 1 May escalated to the HPSNZ CEO by a senior employee.
- 6.87 In my view, it took too long until this matter was comprehensively dealt with and it took escalation to the HPSNZ CEO for that to happen. If a mechanism to escalate risk had been implemented, this issue should have been dealt with by May 2017 (when the CEO and Chair of CNZ became aware).

- 6.88 As mentioned, one of the failings recognised in the CNZ case study was the lack of a mechanism to elevate risk. It is possible that if such a mechanism was implemented, HPSNZ and CNZ would not be in the present situation. A related criticism of HPSNZ was that the multiple touch points on CNZ (consultants, experts, management etc) means that the information received is fragmented and not coordinated.
- 6.89 Many from HPSNZ who had interactions with CNZ were aware of the problems which existed (to greater or lesser degree). They were unable individually to take steps to assist to remedy the situation, other than report matters or to reflect them back to CNZ leadership (which they did). Having identified that CNZ leadership was having difficulties in remedying the situation, it seems HPSNZ were not assertive enough in providing assistance. Several HPSNZ personnel accepted this was the case.
- 6.90 In summary, HPSNZ knew enough of the problems and poor behaviour that it should have taken more direct and decisive action at an earlier time.

Rules, Policies and Codes

- 6.91 I have reviewed the Rules, Policies and Codes of conduct of HPSNZ (Rules) to determine whether they adequately safeguard and protect athletes, coaches and other high performance personnel (including their privacy and confidentiality). I also considered whether there were any breaches of the relevant Rules.
- 6.92 The documents I considered were the:
- a) HPSNZ Code of Conduct;
 - b) Athlete Performance Support Guidelines;
 - c) Sport NZ Group Health & Safety Policy;
 - d) Sport NZ Group's Misconduct Management Policy; and
 - e) Sport NZ Group Discrimination, Harassment and Bullying Prevention Policy;

Relevant extracts of those are contained at Appendix D.

- 6.93 The key criticisms are similar to those made of CNZ. An example relates to the ability to report confidentially on behaviours which are not serious enough to meet the Protected Disclosures Act 2000 threshold.
- 6.94 At page 3 of the Sport NZ Group Health & Safety Policy, there is the Protected Disclosures Act 2000 (PDA) Policy. The purpose of the PDA is to promote "the public interest by creating an environment that encourages employees to report suspected serious wrongdoing. It does this by giving the employee protection in case of retaliation for making the disclosure".⁸³
- 6.95 It is prudent of HPSNZ to have a PDA Policy, however, the conduct which formed the subject matter of this Review would not have been captured by it. The HPSNZ Policy

⁸³ <http://www.ssc.govt.nz/node/2294>

provides protection where "information is about a serious wrongdoing".⁸⁴ Serious wrongdoing is defined in the Policy and includes instances of corruption or a threat to public health or public safety (among others).

- 6.96 Accordingly, while HPSNZ has a whistle-blower policy for defined serious wrongdoing, it does not have a whistle-blower policy or similar mechanism for escalating situations that may provide risk to the organisation, such as the culture and behaviour at issue here.⁸⁵
- 6.97 As identified in the CNZ case study, I believe such a mechanism which meets good practice should be implemented.
- 6.98 In addition, the issue of athlete-coach relationships does not appear to be clearly dealt with other than in the Coaches Code of Ethics. The simple reporting requirement in the HPSNZ Code of Conduct does not seem to be in step with international policies (referred to above). I recommend this is clarified.
- 6.99 In terms of broader athlete (and other participant) welfare, HPSNZ and Sport NZ should reflect on other measures which may assist in this area.

For example:

- Whether an independent conduct and welfare body is required;
- Whether more support to player advocates or players' associations should be provided;
- Whether changes in the relationship between HPSNZ and NSO's are required to ensure that athlete and participant welfare gets sufficient priority;
- Whether the current investment model adequately protects athlete welfare (and the welfare of all engaged in the high performance area);
- Whether centralised programmes such as with CNZ create special risks for athlete welfare and if so how those are to be addressed.

Again the current welfare and integrity related reviews will provide valuable assistance.

⁸⁴ along with other criteria.

⁸⁵ The absence of such a process was also noted in the recent NZ Football review.

REFERRALS WHICH MAY GIVE RISE TO FURTHER ACTION

Terms 2.13

- 7.1 During the Review information was revealed to me that suggested that there may have been breaches of agreements or codes of conduct. As these instances in theory may result in consideration of disciplinary procedures I will not describe them in this Report.
- 7.2 In summary, I will deal with this part of the review in confidence through the appropriate channels specified in the Terms.
- 7.3 I do so in part to ensure that there is accountability for conduct which was distressing and/or harmful to the Programme. The primary goal in doing so, however, is to ensure that those persons are educated, counselled and one hopes improved by any process that follows. That is in recognition of the historic nature of the particular incidents I am referring.

APPENDIX A

The Terms of Reference approved by the HPSNZ Board on 5 June 2018, relevantly provide:

- 1.1 HPSNZ invests in high performance sport for the many benefits it brings to the whole country including the national pride felt with New Zealanders standing on the podium. The most successful athletes and their coaches act as role models. They also inspire other New Zealanders to be successful. Integrity is an important value of HPSNZ and of high performance sport in New Zealand. It is imperative that the trust and confidence in HPSNZ and the Cycling NZ High Performance Programme is maintained to the highest level.
- 1.2 It is also the role of HPSNZ to create a sustainable winning culture across the high performance system which both respects the rights of, and satisfies the duty of care required for, all athletes to ensure they can perform to their potential.
- 1.3 HPSNZ has become aware of several allegations against Peden and the Cycling NZ High Performance Programme more generally of bullying, inappropriate behaviour, inappropriate personal relationships, a dysfunctional culture, and a drinking culture as well as allegations of lack of accountability including questions on the follow up and use of information obtained in a debrief held after the 2016 Rio Olympic Games.

2. Scope of Review

The scope of the Review is to:

Cycling NZ

- 2.1 determine whether the allegations of inappropriate behaviour in the Cycling NZ High Performance Programme, as described in these Terms of Reference, are true;
- 2.2 review Cycling NZ's response to such allegations and behaviours and assess whether such response was adequate and appropriate, including the actions taken by Cycling NZ following the Rio Debrief and the extent to which Cycling NZ was aware of the allegations described in these Terms of Reference prior to their public disclosure on 30 May 2018;
- 2.3 consider any other information of alleged inappropriate relationships, bullying, or other inappropriate behaviour in the Cycling NZ High Performance Programme that may be brought to the attention of the Reviewer;

- 2.4 assess the culture of the Cycling NZ High Performance Programme including allegations of a “toxic environment” including attitudes and tolerances to inappropriate behaviour, and make recommendations on the steps to be taken to ensure a high performance culture of excellence in all respects;
- 2.5 review the rules, policies, procedures, codes of conduct and systems of Cycling NZ relating to the management of athletes, coaches, other support personnel in the Cycling NZ High Performance Programme, and assess whether the conduct of any Cycling NZ employees or contractors in relation to the Rio Debrief or otherwise arising out of matters within the scope of this Review, may have breached any of them; and to also assess whether such rules, policies, procedures, codes of conduct and systems adequately safeguard and protect athletes, coaches and other high performance personnel at Cycling NZ including their privacy and confidentiality;
- 2.6 refer any information obtained about employees or contractors of Cycling NZ which may give rise to further action, to the Cycling NZ Chief Executive (unless such information relates to the Cycling NZ Chief Executive, in which case refer the information to the Cycling NZ Chairperson);
- 2.7 provide advice and recommendations on the steps Cycling NZ should take as a result of the findings of the Reviewer, consistent with HPSNZ’s ambition to create a world leading sustainable high performance sport system;

HPSNZ

- 2.8 identify, in detail, the information received and steps taken by HPSNZ in the Rio Debrief including whether there were any allegations made or evidence alleged of inappropriate behaviour within the Cycling NZ High Performance Programme, and if so, when and how that occurred;
- 2.9 identify whether HPSNZ received any other information from the beginning of 2016 or after, containing any allegations or evidence of alleged inappropriate behaviour within the Cycling NZ High Performance Programme;
- 2.10 review HPSNZ’s response to all such allegations and behaviours and assess whether or not the steps taken by HPSNZ from the information it received about any allegations and behaviours in the Rio Debrief or at any other time, was adequate and appropriate;
- 2.11 identify how information was obtained by HPSNZ in the Rio Debrief and how and when it obtained any other information about alleged inappropriate behaviour; identify how such information was held, used and disclosed by HPSNZ (and to whom any such disclosure was made); and identify any steps

HPSNZ should take to improve and ensure the proper security and use of personal and confidential information;

- 2.12 review the rules, policies, procedures, codes of conduct and systems of HPSNZ relating to the management of athletes, coaches, other support personnel in the Cycling NZ High Performance Programme, and assess whether the conduct of any HPSNZ employees or contractors in relation to the Rio Debrief or otherwise arising out of matters within the scope of this Review, may have breached any of them; and to also assess whether such rules, policies, procedures, codes of conduct and systems adequately safeguard and protect athletes, coaches and other high performance personnel including their privacy and confidentiality;
- 2.13 refer any information obtained about employees or contractors of HPSNZ which may give rise to further action, to the HPSNZ Chief Executive (unless such information relates to the HPSNZ Chief Executive, in which case refer the information to the HPSNZ Chairperson); and,
- 2.14 provide advice and recommendations on the steps HPSNZ should take as a result of the findings of the Reviewer, consistent with HPSNZ's ambition to create a world leading sustainable high performance sport system.

[footnotes have not been reproduced]

APPENDIX B

Relevant extracts from CNZ Rules, Codes of Conduct, contracts and policy documents are reproduced below:

The CNZ Constitution provides at 13.2:

13.2

Breach:

The following matters may constitute a breach of this Constitution by a Member:

- a. failing or refusing to pay any membership or other fees or other payments to Cycling NZ that are due and outstanding; or
- b. failing to comply with a provision of this Constitution, the Regulations, or any reasonable resolution or determination of the Board; or
- c. a default under any written agreement entered into with Cycling NZ; or
- d. acting in a manner unbecoming of a Member or prejudicial to the Objects or the interests of Cycling NZ and/or Cycling; or
- e. bringing Cycling NZ, another Member, or the sport of Cycling into disrepute.

The CNZ Operations Policy provides at 1:

1. Code of Conduct

1.1 Policy

As well as being expected to ensure satisfactory individual performance, employees also have a duty to contribute to the smooth functioning of the working environment by treating their colleagues and the public with courtesy and respect at the workplace and in settings outside the workplace. In meeting this obligation, employees are expected:

- To avoid behaviour which might endanger or cause distress to other employees, or otherwise contribute to disruption of the workplace;
- To refrain from allowing workplace relationships to affect adversely the performance of official duties;
- To respect the privacy of individuals when dealing with personal information;
- Not to discriminate against or harass others because of their sex, marital status, family status, ethnicity, race, colour, age, sexual orientation, disability, political opinion, religious or ethical beliefs, or employment status;
- To respect the cultural background of colleagues and stakeholders in all official dealings;
- To have due regard for the safety of others in the use of Cycling New Zealand property and resources.

Employees shall conduct themselves in a polite, friendly and helpful manner in all written (including electronic) and oral communications and at all times.

Workplace Harassment

Workplace harassment is defined as any unwelcome verbal or physical behaviour, conduct or display of material which has no legitimate workplace function and which has the effect of offending, humiliating or intimidating another workplace participant. It may involve the actions of an individual or a group. It involves unwelcome behaviour from a colleague, manager, employee, member of the public, or a person whom an employee meets in his/her official capacity. Harassment includes unwelcome behaviour that occurs at work or between workplace participants in settings outside the workplace. Harassment and victimisation may result in disciplinary action and might result in a complaint being made to the Human Rights Commission or the Employment Court against individual(s) and/or the Ministry.

Discrimination on the basis of sex, marital status, religious or ethical belief, race and colour, ethnic and national origins, disability, age, political opinion, employment status, family status and sexual orientation is unlawful under the Human Rights Act 1993. Sexual harassment is also unlawful under the Employment Relations Act 2000. The Act defines sexual harassment as:

- Requesting a sexual contact from a worker with the promise of preferential treatment or the threat of some harm to the worker's future employment;
- Using words of a sexual nature, or physical behaviour of a sexual nature, which is unwelcome or offensive and repeated or serious enough to cause harm to the worker's employment, job performance or job satisfaction.

Workplace bullying is not tolerated by Cycling New Zealand. It is defined as repeated inappropriate behaviour, direct or indirect, whether verbal, physical or otherwise, conducted by one or more persons against another or others, at the place of work and/or in the course of employment, which could reasonably be regarded as undermining the individual's right to dignity at work.

Workplace bullying is language, visual material or physical behaviour that directly or indirectly: expresses hostility against or intimidates or ridicules an employee(s); is unwanted, hurtful and offensive to the employee(s); and has, by its significant nature or through repetition, a detrimental effect on an employee(s).

Breaches of these responsibilities and policy will be investigated and dealt with. Any employee found to be in breach of these policies may be subject to disciplinary action including dismissal.

The CNZ drugs and alcohol policy at page 20 of the CNZ Health and Safety Policy provides:

Management recognises drug and alcohol abuse as a potential serious hazard/risk and will take a firm approach to dealing with such abuse. Management and Workers shall all work together to maintain a work environment that is free from the use and effects of drugs, alcohol and other mood altering substances. Prescribed drugs or medicine for private use are obviously permitted at all times providing they do not interfere with the Workers ability to perform their work in a safe manner. Workers who are taking prescribed medication that may affect their work should notify their manager. Any Worker or Contractor may be requested to undergo a pre-employment, random, post incident or with reasonable cause drug or alcohol test at any time. It is a requirement of many workplaces that only those Workers or Contractors who have passed a drug and alcohol test will be permitted on that site. Accordingly, any Worker or Contractor who fails or refuses to undergo a test will not be permitted on such a site.

All urine drug tests will be conducted by a qualified collection agent using certified test equipment in accordance with AS/NZS 4308:2008; and alcohol screening will be carried out using a certified breathalyser in accordance with AS3547. Workers or Contractors working in a safety sensitive areas or whose primary duties consist of driving or operating company vehicles or machinery are more likely to be tested, as well as those who shows signs of being affected by drugs or alcohol, or where evidence is found of possible alcohol or other drug use at work or where the Worker or Contractor has recently been involved in a workplace incident. If a Worker Contractor or Visitor or contractor arrives at the workplace, and you have reasonable cause to suspect that they are under the influence of alcohol or drugs, you should report this to your manager who should immediately remove that person from the work environment. If you have any doubt about whether they are, or are not impaired, you should err on the side of caution and ask that they be removed from the work environment.

If you believe that a fellow Worker or Manager in a more senior position is in violation of this policy, you are encouraged to notify their manager. Unexpected circumstances can arise when an off-duty staff member is requested to work. If you are in this position and you feel unfit due to the influence of alcohol or other drugs, it is your responsibility to refuse the request and ask that it be redirected to another person. Any Contractor who refuses to submit to or co-operate fully with the administration of an alcohol or drug screen will be requested to vacate the workplace immediately. Any Worker who refuses to submit to or co-operate fully with the administration of an alcohol or drug screen will be managed in accordance with the Workers employment contract.

Oral Fluid Screening may be requested at any time and any non-negative result will be followed up using confirmatory methods such as a blood or urine screen/test. Oral screening will be conducted in accordance with AS4760. Any Worker who returns a positive alcohol breath screen or urine screen, or attempts to avoid or falsify any drug or alcohol test will be stood down pending determination of the test result by a certified laboratory. If the final result is negative, the Worker shall return to work without deduction of income. However should the laboratory report a positive result, the Worker shall not be permitted to resume work until such time as they can return a negative test. The company is entitled to deduct from the worker's pay, or annual and/or sick leave entitlements, any period during which the worker was stood down.

Any Worker working in a safety sensitive area or whose primary duties consist of driving or operating company vehicles or machinery and who returns a positive drug test result or is disqualified from driving will be subjected to disciplinary procedure; the outcome of which may result in termination of employment.

Relevant extracts from the CNZ Fixed Term Employment Agreement provide:

4. GENERAL RESPONSIBILITIES OF CYCLING NEW ZEALAND

- 4.1 We will act as a good employer in all of our dealings with you, which means that we will treat you fairly and reasonably in all aspects of your employment. We will also take all practicable steps to provide you with a healthy and safe workplace, and will notify you of any rules, policies and procedures that apply to you. We will also support you in your personal and professional development.
- 4.2 In carrying out your responsibilities under this Agreement you must act at all times in a way that promotes and protects our organisation, reputation and relationships. In particular, you will maintain standards of conduct and integrity appropriate for a national sporting and recreation organisation. You will also use reasonable skill and care and act at all times in an ethical and professional manner and in accordance with

any generally accepted practices within your profession. In particular you must not breach any rules, codes or regulations of any professional member organisation to which you are registered or a member or any regulations, rules, or policies of Cycling New Zealand or its member organisations, including the anti-doping rules.

The below conflict of interest clause appears at clause 14 in the Permanent Worker employment agreement:

13. CONFLICT OF INTEREST

- 13.1 You will disclose to us, in writing, all interests of you and of your immediate family, which may conflict with the interests of Cycling New Zealand. You will make the first declaration of interest on signing this Agreement and thereafter at our request or as new interests of yours, and of your immediate family, arise. You agree to take such steps as we reasonably require for resolving or managing any such conflict.
- ...
- 13.3 If we form the opinion that any activity engaged in or about to be engaged in by you impinges upon, or is reasonably likely to impinge upon, the proper performance of your duties and responsibilities under this Agreement, we may after considering any comments from you, direct you to cease or refrain from such activity and you will act accordingly.
- 13.4 For the purpose of this clause we may consider the proper performance of your duties and responsibilities under this Agreement is impinged upon if our commercially sensitive information, intellectual property rights or our commercial reputation is potentially put at risk, or some other real conflict of interest exists.

The below serious misconduct clause appears at clause 16 in the Permanent Worker employment agreement:

Serious misconduct

- 15.6 Notwithstanding clause 15.3 we may, in the event of serious misconduct by you, after considering your explanation of the matter of complaint, terminate this Agreement without notice.
- 15.7 "Serious misconduct" includes (but will not be limited to):
- ...
- (d) Any conduct inside or outside of work where you behave in a manner that does or is likely to bring you, or Cycling New Zealand, into disrepute or which may be detrimental to Cycling New Zealand's business or relationships, or your relationships with your colleagues, or the trust and confidence we have in you;
- (j) Being drunk, purchasing or using illegal substances, drug derivatives or drugs whilst on Cycling New Zealand business;

APPENDIX C

Code of ethics

BikeNZ Coaches/Instructors should:

- Be treated with respect and openness
- Have access to self-improvement opportunities
- Be matched with a level of coaching appropriate to their ability

[PERSONAL DETAILS HERE]

I agree to the following terms:

1. I agree to abide by the Bike NZ Coaches/Instructors' Code of Ethics below.
 2. I acknowledge BikeNZ may take disciplinary action against me if I breach the Code of Ethics. I understand that BikeNZ is required to implement a complaints handling procedure in accordance with the principles of natural justice in the event of an allegation against me.
 3. I acknowledge that disciplinary action against me for a proven or established breach may include de-registration of my coaching accreditation, depending on the seriousness of the breach.
- 1. Respect the rights, dignity and worth of every individual rider as a human being**
 - Treat everyone equally regardless of sex, disability, ethnic origin or religion.
 - Respect the talent, developmental stage and goals of each rider in order to help each rider reach their full potential.
 - 2. Maintain high standards of integrity**
 - Operate within the rules of Bike NZ and the UCI and in the spirit of fair play, while encouraging your riders to do the same.
 - Advocate a sporting environment free of drugs and other performance-enhancing substances within the guidelines of the New Zealand Sports Drug Agency and the World Anti-Doping Code.
 - Do not disclose any confidential information relating to riders without their written prior consent.
 - 3. Be a positive role model for cycling and riders and act in a way that projects a positive image of coaching**
 - All riders are deserving of equal attention and opportunities.
 - Ensure the rider's time spent with you is a positive experience.
 - Be fair, considerate and honest with riders.
 - Encourage and promote a healthy lifestyle - refrain from smoking and drinking alcohol around riders.
 - 4. Professional responsibilities**
 - Display high standards in your language, manner, punctuality, preparation and presentation.
 - Display control, courtesy, respect, honesty, dignity and professionalism to all involved within the sphere of sport - this includes opponents, coaches, officials, administrators, the media, parents and spectators.
 - Encourage your riders to demonstrate the same qualities.
 - Be professional and accept responsibility for your actions.

- You should not only refrain from initiating a sexual relationship with riders, but should also discourage any attempt by an rider to initiate a sexual relationship with you, explaining the ethical basis of your refusal.
- Accurately represent personal coaching qualifications, experience, competence and affiliations.
- Refrain from criticism of other coaches and riders.

5. Make a commitment to providing a quality service to your riders

- Seek continual improvement through on-going coach education, and other personal and professional development opportunities.
- Provide riders with planned and structured training programmes appropriate to their needs and goals.
- Seek advice and assistance from professionals when additional expertise is required.
- Maintain appropriate records.

6. Provide a safe environment for training and competition

- Adopt appropriate risk management strategies to ensure that the training and/or competition environment is safe.
- Ensure equipment and facilities meet safety standards.
- Ensure equipment, rules, training and the environment are appropriate for the age, physical and emotional maturity, experience and ability of the riders.
- Show concern and caution toward sick and injured riders.
- Allow further participation in training and competition only when appropriate.
- Encourage riders to seek medical advice when required.
- Provide a modified training programme where appropriate.
- Maintain the same interest and support toward sick and injured riders as you would to healthy riders.

7. Protect your riders from any form of personal abuse

- Refrain from any form of verbal, physical or emotional abuse towards your riders.
- Refrain from any form of sexual or racial harassment, whether verbal or physical.
- Do not harass, abuse or discriminate against riders on the basis of their sex, marital status, sexual orientation, religious or ethical beliefs, race, colour, ethnic origins, employment status, disability or distinguishing characteristics.
- Any physical contact with riders should be appropriate to the situation and necessary for the rider's skill development.
- Be alert to any forms of abuse directed towards riders from other sources while in your care.

APPENDIX D

Relevant extracts from HPSNZ Rules, Codes of Conduct, and policy documents are reproduced below:

High Performance Sport NZ Code of Conduct

Purpose, page 1:

Coverage

This Code applies to all:

- *Employees of HPSNZ whether permanent, temporary, casual or part-time;*
- *Contractors, consultants and others contracted to provide services to HPSNZ;*
- *Any other person who agrees in writing with HPSNZ to be bound by it, (collectively referred to as HPSNZ Personnel).*

This Code is to be read in conjunction with, and is incorporated into, all employment agreements and contracts HPSNZ personnel have with HPSNZ.

Relationships and Confidentiality, page 5:

Personal Boundaries

- *Assume full responsibility for setting and monitoring the boundaries of their professional relationships with Athletes and Coaches.*
- *Only make physical contact where absolutely necessary for the development of an Athlete's skills or athletic ability.*
- *Notify the Chief Executive Officer and their manager if involved in a sexual or romantic relationship with an Athlete. This will be kept confidential to the manager and the Chief Executive, unless otherwise agreed. The person may be reallocated from working with that Athlete.*

Confidentiality

- *Maintain strict confidentiality of personal information and confidential information, whether received verbally, in writing or otherwise.*
- *Any disclosure of such information shall only be permitted as specified in the employment agreement or service agreement with HPSNZ or as permitted by law.*
- *Comply with the Sport NZ Group IT Usage Policy which deals with the security and privacy of information entrusted to HPSNZ.*

Definitions, page 9:

The words listed below have the following meaning in this Code:

Athlete means a carded athlete or other athlete who is eligible to use any of the support services provided by HPSNZ, either directly or indirectly for example through their national sports organisation including pathway to podium athletes.

Chief Executive means the Chief Executive of HPSNZ.

Coaches means a HPSNZ funded coach.

High Performance Sport NZ

Sport NZ Group Discrimination, Harassment and Bullying Prevention Policy

Purpose, page 1:

The Sport NZ Group (The Group) is committed to providing a work environment and culture free from discrimination, harassment, bullying and victimisation.

This Policy aims to establish clear expectations of behaviour and responsibilities, and procedures for dealing with complaints of discrimination, harassment and bullying.

Scope, page 1:

This Policy applies to all employees, contractors, and temporary staff of the Group.

This Policy applied within the workplace as well as other work-related situations, for example, when employees are travelling on company-related business, attending work-related gatherings outside of the workplace, and dealing with customers, athletes and key stakeholders.

This Policy also applies to all telecommunications, internet and social media activity:

- *On behalf of the Group;*
- *During work hours;*
- *Inside and outside of work hours, which references the Group, its services, employees, contractors, temporary staff, customers, athletes, key stakeholders or other organisations or individuals the Group has a relationship with;*
- *Inside and outside of work hours that could bring the Group into disrepute;*
- *Inside and outside of work hours that could bring into doubt a Group employee/contractor's ability to carry out their role and/or adequately represent the Group;*
- *That relates to the Group post-employment.*

Individual legal liability, page 2:

Instances of discrimination, harassment and bullying could be considered (serious) misconduct and result in disciplinary action up to and including dismissal. Such behaviour could also amount to a breach of the Group's Health and Safety Policy and similarly, result in disciplinary action.

Management responsibility, page 2:

Managers and Organisational Development (OD) are expected to actively promote, implement and support this Policy.

Failure by a manager or OD to act reasonably to prevent or resolve incidents of discrimination, harassment, bullying and victimisation may lead to personal liability under health and safety legislation.

Harassment, page 3:

The Group does not tolerate behaviour which creates a hostile or distressing work environment, undermines morale or reflects adversely on the integrity of the Group.

What is harassment?

Harassment is any uninvited, unwelcome, behaviour that offends, humiliates or intimidates another person, whether or not that effect is intended. Harassment may include physical, psychological, visual, verbal or non-verbal conduct.

Behaviour constituting harassment is often a matter of perception and interpretation, and tolerance for what is considered 'acceptable behaviour' may vary widely among individuals.

Harassment may occur as a single act, or as a series of incidents, persistent innuendoes or threats.

Bullying, pages 5 – 7:

Bullying

Workplace bullying is a significant hazard. It affects people physically and mentally, resulting in increased stress levels, decreased emotional wellbeing, reduced coping strategies and lower work performance.

Definition

Workplace bullying takes place if there is repeated, unreasonable behaviour directed towards a person or a group of people that creates a risk to health and safety.

Repeated behaviour is persistent and can involve a range of actions over time.

Unreasonable behaviour refers to behaviour that a reasonable person, having regard to the circumstances, would see as unreasonable, including behaviour that is victimising, humiliating, intimidating or threatening.

Procedures for resolving complaints

If you feel you have been discrimination against, harassed or bullied, we encourage you to address your complaint as soon as possible so that a resolution can be promptly achieved.

There are three options available to you:

- 1) *Self-help:*
You could explain to the person responsible that their behaviour is of concern (specifying what that behaviour is), that you don't like it, and ask for it to stop.
- 2) *Management intervention or mediation:*
You could request either your team leader or manager, or OD, to intervene. Management intervention or mediation can be informal or formal, and aims to seek a resolution that is acceptable to both parties.
- 3) *Formal complaint:*

A formal complaint can be made to either Group management, or to WorkSafe. This option is usually for more serious claims, when the alleged perpetrator could be disciplined or dismissed if the allegations are found to have substance.

All allegations and complaints will be treated seriously and dealt with expeditiously and confidentially, whether they are raised formally or informally.

If you become aware of any conduct that may breach this Policy, you should report the conduct to your Manager or OD.

Sport NZ Group's Misconduct Management Policy

Summary, page 1:

This Policy details the process that is required to follow if an employee breaches Sport NZ Group's Code of Conduct, policies and procedures. Dealing with employee poor performance is covered separately in another policy.

Why

The objectives of this policy are to:

- *Ensure that our required standards of behaviour are met*
- *Ensure that the correct process is followed and completed*
- *Ensure that the process is procedurally fair and able to stand up to challenge*

What

Breaches of the Code of Conduct must be addressed. They can range from minor (e.g. being late for work) to serious (e.g. committing fraud, assaulting another employee).

...

Serious misconduct must be dealt with immediately. This is critical if dismissal is a potential consequence.

How

OD is to be consulted in situations where line management consider there is a potential employee misconduct situation, irrespective of whether it is a minor or serious misconduct

Sport NZ Group, Health & Safety Policy

Summary, page 1:

The Sport NZ Group is committed to providing a safe and healthy work environment for all our employees, visitors and contractors and is committed to continuously improving our health and safety systems.

Protected Disclosures Act 2000 Policy⁸⁶

Purpose

The purpose of this policy is to ensure the making of disclosures is made a necessary component in non-compliance with legislation within the Sport NZ Group and to comply with the Protected Disclosures Act 2000.

Section 18 of the Protected Disclosures Act 2000 outlines an employee's immunity from civil and criminal proceedings when he or she has made a disclosure, as long as he or she follows specified procedures. The Act specifies that a person may not (unless there are special circumstances) make a disclosure outside the Sport NZ Group if there is an internal system established.

Protection applies where:

- a. *The information is about a serious wrongdoing in or by the Sport NZ Group; and*
- b. *The employee believes on reasonable grounds that the information is true or likely to be true; and*
- c. *The employee wishes to disclose the information so that the serious wrongdoing can be investigated; and*
- d. *The employee wishes the disclosure to be protected.*

Serious wrongdoing includes any serious wrongdoing of any of the following types:

- a. *an unlawful, corrupt, or irregular use of funds or resources of a public sector organisation; or*
- b. *an act, omission or course of conduct that constitutes a serious risk to public health or public safety or the environment; or*
- c. *an act, omission or course of conduct that constitutes a serious risk to the maintenance of law, including the prevention, investigation and detection of offences and the right to a fair trial; or*
- d. *an act, omission or course of conduct that constitutes an offence; or*
- e. *an act, omission or course of conduct by a public official that is oppressive, improperly discriminatory or grossly negligent or that constitutes gross mismanagement.*

Athlete Performance Support Guidelines

2.4 Data Management / Intellectual Property Ownership, page 7:

In agreeing to carding status athletes grant permission for HPSNZ to collect, store, use, discuss and/or disclose personal information for any of the purposes associated with the support provided to them. The carding process also consents the disclosure of personal information to the athletes NSO and any third-party user identified by the athlete. Any such disclosures will be to the athlete at which point they will have the opportunity to refuse consent to any such disclosure. All data and intellectual property will be treated ethically and in line with appropriate confidentiality requirements.

⁸⁶ Contained in the HPSNZ Health & Safety Policy at page 3.

APPENDIX E

Barristers Comm • level 7 • Legal House • 101 Lambton Quay

PO Box 5577 • Wellington 6145 • New Zealand • T +64 4 914 1052 • F +64 4 473 3179

M 021 0241 3822 • E l.hansen@barristerscomm.com

LISA
HANSEN

21 September 2018

Michael Heron QC
By email:

Dear Mr Heron QC

Draft report for CNZ and HPSNZ: Independent Review of Cycling New Zealand High Performance Programme

I write on behalf of Mr Anthony Peden.

Thank you for the opportunity to review the draft report.

The following is his response, which I insist is included in full and verbatim in the report so that readers can judge for themselves the credibility or otherwise of its contents and conclusions. Mr Peden reserves the right to publish this response if his comments are not adequately reflected in the final report.

The report is grossly inaccurate in many respects, and based on unreliable and inaccurate evidence. This is unsurprising given that the evidence obtained and relied on is predominantly second and third hand, and includes conjecture, perception, conjecture-on-conjecture, anecdote, hearsay, gossip, and rumour.

Mr Peden declines to critique the many errors in the report, both factual and inferences, because that may only lead to the airing of further untruths and inaccuracies.

That the evidence is intrinsically unreliable was inevitable as a result of the process followed. None of the interviews with the 70 odd witnesses were recorded by you, and while notes were purportedly taken, there is no indication these notes were ever approved, let alone sworn or affirmed on oath. Mr Peden has never seen this material and it appears each witness's identity has been anonymised. Further, openly inviting any member of the public to meet with you to discuss the terms of reference, gave carte blanche for anyone with an axe to grind to come and do their worst.

If Mr Peden was that way inclined he could chuck an equal amount of mud against those who have provided the unreliable and inaccurate evidence. But he's not.

In short, the process is faulty, the evidence is flawed and unreliable. You as an enquirer must proceed very cautiously before drawing any firm adverse conclusions where little or no direct and tested evidence has been provided. Care is particularly required when the state of the evidence is consistent with alternative and more benign conclusions.

In those circumstances you should approach the exercise more as a judge than as an enquirer.

Mr Peden is a leading coach. He is a Halberg award winner. He has achieved outstanding success and stands by his record. If asked, athletes would have been unable to deny his commitment to ensuring each athlete achieved their potential. However, it appears they weren't asked.

Mr Peden wishes to make two further comments in conclusion. First, he is not prepared to engage in any response that might breach his obligations to CNZ. He feels privileged to have been employed by CNZ and to have worked in the high performance programme with a team of dedicated athletes and staff, including staff at HPSNZ. He wishes them well.

Secondly, while Mr Peden considers the report contains numerous factual and other errors, he has reflected on his behaviour and is committed to ensuring no criticism can be legitimately levelled at him in the future.

Yours sincerely

Lisa Hansen

A handwritten signature in black ink, appearing to read 'Lisa Hansen', written in a cursive style.