



7 March 2013

Elen Perdikogiannis
GM Anti-Doping Programs and Legal Services
Australian Sports Anti-Doping Authority
PO Box 1744
FYSHWICK ACT 2609

By email: Elen.Perdikogiannis@asada.gov.au

Dear Elen

Re: ASADA Investigation following on from ACC report into Organised Crime and Drugs in Sport (Investigation) – new statement

I refer to your email dated 7 March 2013 attaching a new statement in relation to the Investigation (**New Statement**).

The wording released by ASADA on 20 February 2013 (**Original Statement**) (as detailed in Annexure A to this letter) was extensively negotiated between the AFL and ASADA, and, in our view, is clear on its face and unambiguous.

Further, the AFL, the Essendon Football Club (and its players and officials), and the AFL Players' Association have all relied upon the **Original Statement** and the Investigation has commenced and is ongoing on the basis of this reliance.

It is the AFL's, Essendon Football Club's (and its players and officials), and the AFL Players' Association's clear understanding that the Investigation and any subsequent actions will be conducted in accordance with your **Original Statement**.

Yours sincerely,

Gillon McLachlan
Deputy Chief Executive

Copy to: Andrew Demetriou, AFL
Andrew Dillon, AFL
Brett Clothier, AFL
Aurora Andruska, ASADA
Darren Mullaly, ASADA
Paul Simonsson, ASADA
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ANNEXURE A – ASADA Statement of 20 February 2013

AUSTRALIAN SPORT ANTI-DOPING AUTHORITY INVESTIGATION INTO ACTIVITIES AT ESSENDON FC

ASADA met with you on 18 February 2013 to give you an overview of ASADA's investigation process and of the possible outcomes of the investigation.

Today (20 February 2013) we have come back to you to explain in more detail how the investigation is going to proceed from this point.

To provide an immediate level of comfort for the Essendon players, ASADA has determined the following assistance be given to the Essendon players.

- First, representatives of ASADA will address the players to explain the investigative process and players rights and entitlements should they wish to come forward.
- ASADA will explain to the players that these are exceptional circumstances and the defence of no fault or negligence may be available.
- It will be explained to players that under a *no fault or negligence* defence a player can receive a complete elimination of sanction. (Ultimately whether a player receives the *no fault or negligence defence* or *substantial assistance* will depend on the individual's circumstances).
- Where a player does come forward and provides a sworn statement regarding his involvement and the involvement of any other person, ASADA will fully explore all avenues in an attempt to provide a *no fault or negligence defence* or *substantial assistance*.
- ASADA acknowledges that a significant contributing factor in the consideration of a *no fault or negligence defence*, will be the extent to which players knew or suspected they had used prohibited substances at the instigation of sports science staff and took utmost caution in relation to the treatment they were receiving.
- Where ASADA forms the view that the defence of *no fault or negligence* is available in relation to a particular player, ASADA will support the application of that defence to that player in proceedings before relevant sport tribunals.
- ASADA will assist in providing an expedient process for those players who wish to come forward and give their version of events to assist the investigation.
- The investigation will take its normal course and will not be undermined or compromised.
- Any player that is found to have lied in the sworn statement or deliberately withheld information will be taken to have aggravating circumstances and may face a 4 year ban from sport in addition to having committed perjury.

Australian Sports Anti-Doping Authority investigation following on from Australian Crime Commission report into Organised Crime and Drugs in Sport (ACC Report)

ASADA is currently conducting an investigation across sports following on from the publication of the ACC Report. This investigation is complex.

ASADA representatives have, by invitation from sports, addressed player groups to explain the investigation process and players' rights and entitlements should they wish to come forward.

- Should other teams or clubs wish for ASADA representatives to address their player groups, ASADA will do so.
- ASADA will explain to the players as a whole the sanctions and defences (including but not limited to the defence of *no fault or negligence*) that may be applicable under the anti-doping policy of their sport.
- Where a player comes forward to be interviewed and provides a sworn statement regarding his involvement and the involvement of any other person in a possible anti-doping rule violation, ASADA will give favourable consideration to not opposing an application for a reduction based on *substantial assistance*.
- It will be for each player to establish any defence they wish to rely on before a sport tribunal. Where a player seeks to rely on the defence of *no fault or negligence* before a sport tribunal, and ASADA forms the view at the conclusion of its investigation that all the elements of the defence are established in respect of that player, ASADA will give favourable consideration to not opposing an application to rely on this defence at a sport tribunal.
- ASADA will assist sports in providing an expedient process for those players who wish to come forward and give their version of events to assist the investigation.
- ASADA's investigation will take its normal course and will not be undermined or compromised.
- Any player that is found to have lied or deliberately withheld information from investigators about possible anti-doping rule violations will be taken to have aggravating circumstances and may face a 4 year ban from sport in addition to other consequences that might apply.



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Office of the Chief Executive Officer

7 August 2013

Mr Andrew Demetriou
Chief Executive Officer
Australian Football League

Dear Mr Demetriou

I refer to ASADA's letter to you dated 2 August 2013 (attached) whereby ASADA disclosed to you a copy of our Interim Report. Please find attached an electronic Microsoft Word version of the report which is a copy of the same Interim Report disclosed to you with some alterations in redactions.

I draw your attention to the section in our 2 August 2013 letter that is titled "Basis on which this interim report is being provided". Please note that the attached report is being provided to you on exactly the same basis as outlined on 2 August 2013. We ask that you please attach the 2 August 2013 letter and this letter to the attached report so that anyone who has access to the attached report can read the basis on which the Interim Report is being provided by ASADA.

Yours sincerely

Aurora Andruska PSM
Chief Executive Officer

APPENDIX B

Documents to be provided to interviewee by ASADA

Preliminary

The Australian Sports Anti-Doping Authority (ASADA) and the Australian Football League (AFL) investigation involves an allegation that AFL athletes and support persons may have used prohibited substances including, but not limited to, growth hormone releasing peptides and human growth hormones. It is also alleged that some AFL athletes and support persons may have engaged in prohibited methods.

The use of prohibited substances or methods may constitute a breach of the World Anti-Doping Code and the AFL's Anti-Doping Code 2010.

Your obligations

The AFL's Anti-Doping Code imposes an obligation on Players, Clubs, Officers and Officials to notify the AFL General Manager - Football Operations (or his delegate) of all facts and circumstances where the Player, Club, Officer or Official believes there is or may be an Anti-Doping Rule Violation or other breach of the Code (Rule 12.2).

Further, Rule 12.7 states:

Each Player, Club, Officer and Official must upon the request of the AFL General Manager Football Operation or the AFL Medical Officer:

- fully co-operate with any investigation;
- fully and truthfully answer any question asked for the purpose of such investigation; and
- provide any document in their possession or control relevant to such investigation.

If you have possession or control of documents relevant to the investigation, you should declare that fact to investigators so arrangements can be made to inspect them.

The AFL is keen to ensure that confidentiality is maintained during this investigation. For that reason you are not authorised to disclose any facts or circumstances learnt by you during the course of this interview except for the purpose of legal representation and then only on the condition that those matters are kept confidential between you and your legal representative.

Your rights

You may be represented by a legal practitioner.

In the absence of a legal practitioner, you may bring a support person with you to the interview, however, this person will not be an active participant in the interview.

Failure to comply

Failure to comply with the requirements in this notice may be acted upon by the AFL as a breach of the AFL's Anti-Doping Code which if perused by the AFL could be sanctioned at the discretion of the AFL Tribunal under Anti-Doping Code rule 14.11.

Potential benefits of co-operating

There are potential benefits to you if you co-operate with ASADA's investigation. The benefits flow from rules in the AFL's Anti-Doping Code which are based on and identical to those in the World Anti-Doping Code (WADC) with respect to "*Substantial Assistance*".

Substantial Assistance

Substantial Assistance is where an Athlete, Athlete Support Personnel or other Person who may have committed potential anti-doping rule violations co-operates with anti-doping organisations and provides assistance and information to establish anti-doping rule violations by others. It may be possible to receive up to a ¾ reduction in the otherwise applicable two-year sanction if you provide *Substantial Assistance*.

There are strict guidelines under the AFL's Anti-Doping Code and WADC which govern any reduction in the period of *Ineligibility* you may receive arising out of the assistance you provide to ASADA throughout the course of its investigations. A full copy of the relevant rules relating to *Substantial Assistance* extracted from the AFL's Anti-Doping Code and WADC is on the following pages.

How *Substantial Assistance* works

If you satisfy several conditions ASADA may recommend that the AFL seek to impose a penalty on you of six (6) months *Ineligibility* instead of the otherwise standard two (2) year sanction. This means that after six (6) months you can go back to training and competing in sport. To receive this discount you must:

- waive your right to a hearing under the AFL's Anti-Doping Code;

- fully disclose in a signed written statement all the information you know in relation to anti-doping rule violations;
- fully co-operate with the investigation and hearing of any case related to the information you provide in your statement, including, for example, giving evidence at a hearing if requested to do so by ASADA and/or the AFL; and
- provide truthful information that is credible.

To qualify, the information provided must comprise an important part of any case which is initiated or, if no case is initiated, must have provided a sufficient basis on which a case could have been brought.

Timing of Substantial Assistance

The earlier in the investigation you co-operate and provide useful information that amounts to *Substantial Assistance*, the greater the discount you are likely to receive.

If you delay in providing information to ASADA and/or the AFL, you run the risk that the same information will be obtained from someone else. If that happens when you do decide to co-operate your information is not likely to form an important part of any case and you will not be entitled to any discount for Substantial Assistance.

It is important to note that if all the criteria in this letter are fulfilled by you and any reduction in sanction is given to you (including the suspension of three quarters of the maximum period of *Ineligibility*) the World Anti-Doping Agency (WADA) still has a right to appeal the sanction to the Court of Arbitration of Sport. In any such appeal it would be for you, with the support of ASADA and the AFL, to demonstrate that the sanction was suspended reasonably and in accordance with the AFL's Anti-Doping Code and WADC. You will be aware that sanctions of 6 months were imposed on the cyclists who co-operated in the Lance Armstrong case and that no appeal was made by WADA seeking longer sanctions.

A full explanation of the substantial assistance provisions are outlined in the *World Anti-Doping Code 10.5.3*. A copy of this particular provision will be provided to you on request.

World Anti-Doping Code 10.5.3

Substantial assistance in discovering or establishing anti-doping rule violations.

An Anti-Doping Organization with results management responsibility for an anti-doping rule violation may, prior to a final appellate decision under Article 13 or the expiration of the time to appeal, suspend a part of the period of Ineligibility imposed in an individual case where the Athlete or other Person has provided Substantial Assistance to an Anti-Doping Organization, criminal authority or professional disciplinary body which results in the Anti-Doping Organization discovering or establishing an anti-doping rule violation by another Person or which results in a criminal or disciplinary body discovering or establishing a criminal offense or the breach of professional rules by another Person. After a final appellate decision under Article 13 or the expiration of time to appeal, an Anti-Doping Organization may only suspend a part of the applicable period of Ineligibility with the approval of WADA and the applicable International Federation. The extent to which the otherwise applicable period of Ineligibility may be suspended shall be based on the seriousness of the anti-doping rule violation committed by the Athlete or other Person and the significance of the Substantial Assistance provided by the Athlete or other Person to the effort to eliminate doping in sport. No more than three-quarters of the otherwise applicable period of Ineligibility may be suspended. If the otherwise applicable period of Ineligibility is a lifetime, the non-suspended period under this section must be no less than 8 years. If the Anti-Doping Organization suspends any part of the period of Ineligibility under this Article, the Anti-Doping Organization shall promptly provide a written justification for its decision to each Anti-Doping Organization having a right to appeal the decision. If the Anti-Doping Organization subsequently reinstates any part of the suspended period of Ineligibility because the Athlete or other Person has failed to provide the Substantial Assistance which was anticipated, the Athlete or other Person may appeal the reinstatement pursuant to Article 13.2.

[Comment to Article 10.5.3: The cooperation of Athletes, Athlete Support Personnel and other Persons who acknowledge their mistakes and are willing to bring other anti-doping rule violations to light is important to clean sport.

Factors to be considered in assessing the importance of the Substantial Assistance would include, for example, the number of individuals implicated, the status of those individuals in the sport, whether a scheme involving Trafficking under Article 2.7 or administration under Article 2.8 is involved and whether the violation involved a substance or method which is not readily detectible in Testing. The maximum suspension of the Ineligibility period shall only be applied in very exceptional cases. An additional factor to be considered in connection with the seriousness of the anti-doping rule violation is any performance-enhancing benefit which the Person providing Substantial Assistance may be likely to still enjoy. As a general matter, the earlier in the results management process the Substantial Assistance is provided, the greater the percentage of the period of Ineligibility may be suspended.

If the Athlete or other Person who is asserted to have committed an anti-doping rule violation claims entitlement to a suspended period of Ineligibility under this Article in connection with

the Athlete or other Person's waiver of a hearing under Article 8.3 (Waiver of Hearing), the Anti-Doping Organization shall determine whether a suspension of a portion of the period of Ineligibility is appropriate under this Article. If the Athlete or other Person claims entitlement to a suspended period of Ineligibility before the conclusion of a hearing under Article 8 on the anti-doping rule violation, the hearing panel shall determine whether a suspension of a portion of the period of Ineligibility is appropriate under this Article at the same time the hearing panel decides whether the Athlete or other Person has committed an anti-doping rule violation. If a portion of the period of Ineligibility is suspended, the decision shall explain the basis for concluding the information provided was credible and was important to discovering or proving the anti-doping rule violation or other offense. If the Athlete or other Person claims entitlement to a suspended period of Ineligibility after a final decision finding an anti-doping rule violation has been rendered and is not subject to appeal under Article 13, but the Athlete or other Person is still serving the period of Ineligibility, the Athlete or other Person may apply to the Anti-Doping Organization which had results management responsibility for the anti-doping rule violation to consider a suspension in the period of Ineligibility under this Article. Any such suspension of the period of Ineligibility shall require the approval of WADA and the applicable International Federation. If any condition upon which the suspension of a period of Ineligibility is based is not fulfilled, the Anti-Doping Organization with results management authority shall reinstate the period of Ineligibility which would otherwise be applicable. Decisions rendered by Anti-Doping Organizations under this Article may be appealed pursuant Article 13.2.

This is the only circumstance under the Code where the suspension of an otherwise applicable period of Ineligibility is authorized.]

Substantial Assistance: For purposes of Article 10.5.3, a Person providing Substantial Assistance must: (1) fully disclose in a signed written statement all information he or she possesses in relation to anti-doping rule violations, and (2) fully cooperate with the investigation and adjudication of any case related to that information, including, for example, presenting testimony at a hearing if requested to do so by an Anti-Doping Organization or hearing panel. Further, the information provided must be credible and must comprise an important part of any case which is initiated or, if no case is initiated, must have provided a sufficient basis on which a case could have been brought.

Commonwealth Criminal Code

Division 137—False or misleading information or documents

137.1 False or misleading information

- (1) A person is guilty of an offence if:
- (a) the person gives information to another person; and
 - (b) the person does so knowing that the information:
 - (i) is false or misleading; or
 - (ii) omits any matter or thing without which the information is misleading; and
 - (c) any of the following subparagraphs applies:
 - (i) the information is given to a Commonwealth entity;
 - (ii) the information is given to a person who is exercising powers or performing functions under, or in connection with, a law of the Commonwealth;
 - (iii) the information is given in compliance or purported compliance with a law of the Commonwealth.

Penalty: Imprisonment for 12 months.

- (1A) Absolute liability applies to each of the subparagraph (1)(c)(i), (ii) and (iii) elements of the offence.

- (2) Subsection (1) does not apply as a result of subparagraph (1)(b)(i) if the information is not false or misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3).

- (3) Subsection (1) does not apply as a result of subparagraph (1)(b)(ii) if the information did not omit any matter or thing without which the information is misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3). See subsection 13.3(3).

- (4) Subsection (1) does not apply as a result of subparagraph (1)(c)(i) if, before the information was given by a person to the Commonwealth entity, the Commonwealth entity did not take reasonable steps to inform the person of the existence of the offence against subsection (1).

Note: A defendant bears an evidential burden in relation to the matter in subsection (4). See subsection 13.3(3).

- (5) Subsection (1) does not apply as a result of subparagraph (1)(c)(ii) if, before the information was given by a person (the *first person*) to the person mentioned in that subparagraph (the *second person*), the second person did not take reasonable steps to inform the first person of the existence of the offence against subsection (1).

Note: A defendant bears an evidential burden in relation to the matter in subsection (5). See subsection 13.3(3).

- (6) For the purposes of subsections (4) and (5), it is sufficient if the following form of words is used:

"Giving false or misleading information is a serious offence".

137.2 False or misleading documents

- (1) A person is guilty of an offence if:
- (a) the person produces a document to another person; and
 - (b) the person does so knowing that the document is false or misleading; and
 - (c) the document is produced in compliance or purported compliance with a law of the Commonwealth.

Penalty: Imprisonment for 12 months.

- (2) Subsection (1) does not apply if the document is not false or misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3).

- (3) Subsection (1) does not apply to a person who produces a document if the document is accompanied by a written statement signed by the person or, in the case of a body corporate, by a competent officer of the body corporate:

- (a) stating that the document is, to the knowledge of the first-mentioned person, false or misleading in a material particular; and
- (b) setting out, or referring to, the material particular in which the document is, to the knowledge of the first-mentioned person, false or misleading.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3). See subsection 13.3(3).

137.3 Geographical jurisdiction

Section 15.4 (extended geographical jurisdiction—category D)
applies to each offence against this Division.

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Australian Sports Anti-Doping Authority investigation following on from Australian Crime Commission report into Organised Crime and Drugs in Sport (ACC Report)

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- Should other teams or clubs wish for ASADA representatives to address their player groups, ASADA will do so.
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- It will be for each player to establish any defence they wish to rely on before a sport tribunal. Where a player seeks to rely on the defence of *no fault or negligence* before a sport tribunal, and ASADA forms the view at the conclusion of its investigation that all the elements of the defence are established in respect of that player, ASADA will give favourable consideration to not opposing an application to rely on this defence at a sport tribunal.
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INVESTIGATION PLAN

ASADA - OPERATION COBIA

ACC – OPERATION ANDRONICUS

VERSION 1

Approved by: Paul Simonsson

Date: Draft February 2013

Page 1

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PART 1

Background

In September 2011, ASADA initiated Operation Cobia to investigate potential anti-doping rule violations by athletes and support persons involved with the National Rugby League (NRL). The rule violations, which allegedly occurred from 2010 to present, relate to a range of prohibited substances and methods¹ (World Anti-Doping Code – Prohibited List – International Standard), but primarily involve:

- S2 prohibited substance growth hormone releasing hormones;
- S2 prohibited substance growth hormone releasing peptides; and
- S2 prohibited substance human growth hormone.

The use and distribution of prohibited substances within the NRL has also attracted the attention of:

- The Australian Crime Commission (ACC);²
- The New South Wales Police Force (NSWPOL);³ and
- The Therapeutical Goods Administration (TGA).⁴

Investigations undertaken to date indicate a number of potential suppliers of prohibited substances to the NRL athletes and support persons, including:

- Advanced Sports Nutrition (Sports Science Services)
- Best Buy Supplements
- Emortal Essence
- Epigenx Sciences
- Medical Rejuvenation Clinic
- Phil's Fitness
- Pro-Peptides
- Scientific Peptides

There are substantial linkages between the key personnel from all these companies.

¹ World Anti-Doping Code – Prohibited List – International Standards 2010, 2011 & 2012.

² ASADA and ACC signed a Memorandum of Understanding (MOU) for 'Cooperation and Information Sharing' on 16 October 2010 - ASADA CEO, Ms Aurora Andruska and ACC CEO, Mr John Lawler. Refer TRIM BDOC12-41403 (Head Agreement) and TRIM BDOC12-41404 (Annexure A – access to ACID and ALIEN)

³ ASADA and NSWPF signed a Memorandum of Understanding (MOU) 'Concerning the exchange of information and transfer of seized prohibited substances' on 8 December 2009 - ASADA Chairman, Mr Richard Ings and NSWPF General Counsel, Mr Michael Antrum. Refer TRIM BDOC11-38255 (Head Agreement).

⁴ ASADA is able to disclose to the TGA information that relates to a person in connection with a possible anti-doping rule violation by an athlete or support person as per sub clause 4.21(2)(d) of the National Anti-Doping Scheme.

The investigation has also discovered evidence suggesting that the same prohibited substances have been supplied to athletes and support persons from the Australian Football League (AFL).

Possible anti-doping rule violations

Athletes

It is probable that anti-doping rule violations by athletes will be detected during the course of the investigation including:

- Use or attempted use by an athlete of a prohibited substance or a prohibited method.⁵
- Possession of prohibited substances and prohibited methods.⁶
- Trafficking or attempted trafficking in a prohibited substance or prohibited method.
- Administration or attempted administration to an athlete in-competition of a prohibited method or prohibited substance, or administration or attempted administration to an athlete out-of-competition of a prohibited method or a prohibited substance that is prohibited out-of-competition, or assisting, encouraging, aiding, abetting, covering up or other type of complicity involving an anti-doping rule violation or an attempted anti-doping rule violation.⁷

If targeted testing is employed during the investigation⁸, additional anti-doping rule violations may result including:

- Presence of a prohibited substance or its metabolites or markers in an athlete's sample.⁹
- Refusing or failing without compelling justification to submit to sample collection after notification as authorised in applicable anti-doping rules, or otherwise evading sample collection.¹⁰
- Violation of applicable requirements regarding athlete availability for out-of-competition testing, including failure to file required whereabouts information and missed tests that are declared based on rules that comply with the International Standard for Testing.¹¹
- Tampering or attempted tampering with any part of doping control.¹²

⁵ Australian Sports Anti-Doping Authority Regulations 2006 (C'wth), Schedule 1 - The NAD scheme, Part 2, Clause 2.01(2)(b).

⁶ Australian Sports Anti-Doping Authority Regulations 2006 (C'wth), Schedule 1 - The NAD scheme, Part 2, Clause 2.01(2)(f).

⁷ Australian Sports Anti-Doping Authority Regulations 2006 (C'wth), Schedule 1 - The NAD scheme, Part 2, Clause 2.01(2)(h).

⁸ Athletes from the AFL can be tested by ASADA under the 2013 AFL Contract signed in December 2012. Athletes from the NRL can be tested by ASADA under the 2013 in principle testing agreement agreed to in January 2013.

⁹ Australian Sports Anti-Doping Authority Regulations 2006 (C'wth), Schedule 1 - The NAD scheme, Part 2, Clause 2.01(2)(a).

¹⁰ Australian Sports Anti-Doping Authority Regulations 2006 (C'wth), Schedule 1 - The NAD scheme, Part 2, Clause 2.01(2)(c).

¹¹ Australian Sports Anti-Doping Authority Regulations 2006 (C'wth), Schedule 1 - The NAD scheme, Part 2, Clause 2.01(2)(d).

Support Persons

It is probable that anti-doping rule violations by support persons will be detected during the course of the investigation including:

- Possession of prohibited substances and prohibited methods.¹³
- Trafficking or attempted trafficking in a prohibited substance or prohibited method.¹⁴
- Administration or attempted administration to an athlete in-competition of a prohibited method or prohibited substance, or administration or attempted administration to an athlete out-of-competition of a prohibited method or a prohibited substance that is prohibited out-of-competition, or assisting, encouraging, aiding, abetting, covering up or other type of complicity involving an anti-doping rule violation or an attempted anti-doping rule violation.¹⁵

Refer Appendix B, Annexure 1 for a full excerpt of Australian Sports Anti-Doping Authority Regulations 2006 (C'wth), Schedule 1 - The NAD scheme, Part 2, Division 2.1, Anti-Doping rule violations, Clause 2.01(1) & (2).

Substances that may be involved

During the course of the investigation, a broad range of substances have been identified which were allegedly offered, sourced or used by athletes and their support persons. Many of these substances are not prohibited under World Anti-Doping Code – Prohibited List.

Refer Appendix A for a full list of substances and methods that may have relevance to this investigation, including their status with WADA, TGA and the criminal law.

¹² Australian Sports Anti-Doping Authority Regulations 2006 (C'wth), Schedule 1 - The NAD scheme, Part 2, Clause 2.01(2)(e).

¹³ Australian Sports Anti-Doping Authority Regulations 2006 (C'wth), Schedule 1 - The NAD scheme, Part 2, Clause 2.01(2)(f).

¹⁴ Australian Sports Anti-Doping Authority Regulations 2006 (C'wth), Schedule 1 - The NAD scheme, Part 2, Clause 2.01(2)(g).

¹⁵ Australian Sports Anti-Doping Authority Regulations 2006 (C'wth), Schedule 1 - The NAD scheme, Part 2, Clause 2.01(2)(h).

PART 2

Jurisdiction to investigate

The National Rugby League (NRL) and Australian Football League (AFL) and both *Sporting Administration Bodies*.¹⁶ As Sporting Administration Bodies, both organisations have a statutory obligation to at all times have in place, maintain and enforce anti-doping policies and practices that comply with:

- the mandatory provisions of the World Anti-Doping Code and International Standards; and
- the National Anti-Doping (NAD) scheme.¹⁷

Refer to Appendix B, Annexure 2 for relevant definitions relating to the status of the NRL and AFL as Sporting Administration Bodies

Refer to Appendix B, Annexure 3 for additional obligations placed on Sporting Administration Bodies under the NAD scheme.

The anti-doping policies of the NRL and AFL have been approved (including subsequent amendments) by ASADA as required by the NAD Scheme.

Refer Appendix C, Annexure 1. for the Anti-Doping Policy of The Australian Rugby League and National Rugby League.

Refer Appendix C, Annexure 2 for the Anti-Doping Code of the Australian Football League.

Anti-doping rules apply to all persons who are involved as athletes or support persons in a sport with an anti-doping policy and such persons are subject to the NAD scheme.¹⁸

For the purpose of the NAD scheme, a support person is a person who works with or treats 1 or more athletes participating in, or preparing for, sporting activities in 1 or more of the following capacities:

- coach;
- trainer;
- manager;
- agent;
- team staff member;
- official;
- medical practitioner;
- para-medical practitioner; or

¹⁶ Australian Sports Anti-Doping Authority Act 2006 (C'wth), Part 1, Section 4.

¹⁷ Australian Sports Anti-Doping Authority Regulations 2006 (C'wth), Schedule 1 - The NAD scheme, Clause 2.04 (a)(i) - (ii).

¹⁸ Australian Sports Anti-Doping Authority Regulations 2006 (C'wth), Schedule 1 - The NAD scheme, Part 1, Clauses 1.06(1) & 1.07(1).

- any other person who works (as a volunteer or otherwise) with, or helps, an athlete subject to the NAD scheme to participate in, or prepare for, sports competition.¹⁹

ASADA is authorised to investigate possible anti-doping rule violations that may have been committed by athletes or support persons.²⁰ An investigation must comply, or substantially comply, with the procedures mentioned in:

- the World Anti-Doping Code; and
- the International Standards; and
- the Australian Government Investigations Standard.

However, failure to comply with those procedures does not affect the validity of the investigation.²¹

Strategic alignment

World Anti-Doping Code

Operation Cobia is consistent with purposes of the World Anti-Doping Code and the World Anti-Doping Program which supports it, namely:

- to protect the Athletes' fundamental right to participate in doping-free sport and thus promote health, fairness and equality for Athletes worldwide; and
- to ensure harmonised, coordinated and effective anti-doping programs at the international and national level with regard to detection, deterrence and prevention of doping.²²

ASADA

Operation Cobia is also consistent with the ASADA's strategic objectives for 2011 – 2014 including:

Leadership in anti-doping program delivery

Strategy

- Partner with domestic and international agencies to improve the exchange of anti-doping information and intelligence.

Engaged, motivated, ethical and skilled people

Strategy

¹⁹ Australian Sports Anti-Doping Authority Regulations 2006 (C'wth), Schedule 1 - The NAD scheme, Part I, Clause 1.07(2)(a) & (b).

²⁰ Australian Sports Anti-Doping Authority Act 2006 (C'wth), Section 13(1)(f) & Australian Sports Anti-Doping Authority Regulations 2006 (C'wth), Schedule 1 - The NAD scheme, Part 3, Clause 3.27(1).

²¹ Australian Sports Anti-Doping Authority Regulations 2006 (C'wth), Schedule 1 - The NAD scheme, Part 3, Clause 3.27(2) & (3).

²² World Anti-Doping Code (as revised) and effective from 1 January 2009.

- Foster a culture of collaboration, innovation, high performance and commitment to ASADA's purpose.
- Promote shared understanding of our goals, and those of the government.
- Empower staff to harness opportunities to use and develop their expertise, experience and knowledge.
- Nurture future leaders.

Productive stakeholder relationships

Strategy

- Develop strong, trusting working relationships with government, domestic and international stakeholders within the anti-doping community, sport, and law enforcement.
- Promote awareness and understanding of our role and the principles of doping-free sport within the sporting and wider community.
- Contribute to whole-of-government initiatives to protect the integrity of sport in Australia.

PART 3

Managing the Investigation

Resourcing

Accommodation

The investigation into the alleged doping activity in the NRL will be conducted from the ASADA headquarters in Canberra, with investigators based in Sydney on a needs basis.

The investigation into the alleged doping activity in the AFL will be conducted from the ACC offices in Melbourne.

Equipment

Given the scope of the investigation and the requirements of the Protective Security Framework (PSF), the following equipment will need to be procured for the conduct of this investigation:

- Secure brief cases that meeting the requirements of the PSF.
- Additional digital recording devices for recording interviews with persons of interest and potential witnesses.

Staffing

It is likely that this investigation will require a protracted commitment (4 – 6 months) from ASADA's Anti-Doping Programs and Legal Services portfolio – particularly the Investigations and Intelligence Units.

Additional staffing beyond pre-existing numbers in the Intelligence and Investigations team will be required to conduct the investigation. This will include:

- 1 x FTE Director Canberra
- 3 x FTE non-ongoing investigators in Melbourne (EL2, 2 x EL1)
- 3 x FTE ongoing investigators in Canberra (3x EL1)
- 3 x FTE intelligence staff in Canberra (1 x EL1 2 x APS6)
- 2 x FTE Lawyers Canberra (2 x EL1)

Along with this additional staffing, RISQ has been engaged to provide contracted investigations staff and other services as required. A contract to this effect has been signed with RISQ.

Transcription

It is anticipated that 120 interviews may be required, all of which will require transcription. As such, additional transcription will be required beyond what is normal for the Intelligence and Investigation unit.

Administration

Case Management Systems

The investigation into alleged doping in the AFL will be managed on TRIM. The file for this case is 2012/1043.

The investigation into alleged doping in the NRL will be managed on CMIS. Case Management Project 29 is the central case for the overall matter with individual cases for athletes alleged to have committed an ADRV being created as required. In addition, certain documents, such as the Entities List, will be stored in TRIM. This will occur in the Operation Cobia case file.

Entities list

An Entities List has been created and will be maintained for the duration of the investigation. TRIM document BDOC13-968 refers.

Formal Reviews

The investigation will be subject to weekly (or on an as needs basis) reviews to provide direction to the investigation team, including:

- Jurisdiction
- Scope (authority to limit or widen)
- Priorities
- Timelines
- Resourcing
- Interagency liaison including referrals to law enforcement
- Stakeholder engagement
- Legal Issues
- Information management and security
- Media strategy

The media strategy for this investigation will be managed by the ASADA Communications and Marketing team.

Formal Reviews shall be attended by:

- General Manager, Anti-Doping Programs and Legal Services
- Director Investigation and Intelligence
- Director Testing and Sports Operations
- Director Legal Services & Results Management
- Persons directly involved in the investigation in an investigative, intelligence or operational support capacity as required
- Any other person authorised by the General Manager, Anti-Doping Programs and Legal Services

Interview schedule

The AFL interview schedule has been created and will be maintained for the duration of the investigation. TRIM document BDOC13-7471 refers.

The NRL interview schedule is part of the entities list. TRIM document BDOC13-968 refers.

The interview schedule shall include the following detail:

- Name
- Club
- Position/Person type
- Whether the person has been interviewed
- Date of the interview
- Whether a transcript has been done
- TRIM references for transcript and/or audio recording

Tasking Sheet

A Tasking Sheet has been created and will be maintained for the duration of the investigation. TRIM document BDOC12-49485 refers. Progress against the Tasking Log will be monitored during weekly team meetings.

Team Meetings

Team meetings will be held at weekly. Team meetings will focus on:

- Achievements during the past week
- Objectives for the next week (to be included on the tasking sheet as necessary)
- Priorities
- Individual workloads (potential to reallocate tasks)
- Interagency liaison
- Stakeholder engagement
- Staff welfare
- Information management and security

Team Meetings will be attended by:

- Persons directly involved in the investigation (investigators, analysts or operational support)

PART 4

Stakeholder Engagement

Australian Crime Commission

Liaison

At a strategic level, primary responsibility for liaising with ACC will rest with the General Manager, Anti-Doping Programs and Legal Services.

At an operational level, responsibility for liaising with ACC will rest with the Director Investigations and Intelligence.

Use of ACC intelligence

On 15 March 2013, ASADA Legal Services sought a variation to the Non-Publication Directions (NPD) to the ACC Project Apero Examinations. The purpose of this variation was to make expanded use of the ACC examination material during ASADA Interviews with Operation Cobia persons of interest. ASADA Legal Services met with representatives of the ACC Legal Services on 17 April 2013 to discuss this matter.

REDACTED



REDACTED



Sporting Administration Bodies

Liaison

At a strategic level, primary responsibility for liaising with ACC will rest with the General Manager, Anti-Doping Programs and Legal Services.

At an operational level, responsibility for liaising with ACC will rest with the Director Investigations and Intelligence.

APPENDIX A

Substances that may have relevance to the investigation

Substance	Substance type	WADA status	Year 1st prohibited	TGA status	Criminal Law status
1. Acetyl L Carnitine	Amino acid derivative	Not prohibited			
2. Actovegin	Calf's blood. Supposed to assist with oxygen absorption in the blood.	Not prohibited		Not listed on the SUSMP	Not illegal
3. Amino acids	Molecules used to build peptides and proteins. Used as a recovery supplement.	Not prohibited		Not listed on the SUSMP	Not illegal
4. Aminosyl 11 with Electrolytes	Unknown what this is				
5. AOD-9604	Human Growth Hormone Fragment - assists with weight loss - increases IGF1 levels	Prohibited - SO		Not listed on the SUSMP	Not illegal
6. Alpha Lipic Acid	More information required				
7. Arginine	Amino Acid supplement - supposed to improve lean muscle mass through the release of growth hormone (un-proven)	Not prohibited		Some forms S4, supplement believed to not be listed	Not illegal
8. Ascend Elite Protein Catalyst 120	Supplement - Contains colostrum, which may contain IGF-1. It would need to be tested to show whether it contains IGF-1, and even then, it is debatable whether we could prove performance enhancement given the low bio-availability of colostrum taken orally.	Possibly prohibited, requires testing, but a very difficult case to run.	IGF-1 (if the product contains it) has been prohibited since 2004	If the colostrum contains IGF-1, then technically you would need a prescription. However, this is sold openly so people are using it without one.	If the colostrum contains IGF-1, then technically you would need a prescription.
9. BCA capsules	Not enough information to know what this is.				

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Substance	Substance Type	WADA status	Year 1st prohibited	TGA status	Criminal Law status
10. Beta Alanine	Amino acid	Not prohibited			
11. Biocuticals EPA/DHA	Supplement containing lipids	No prohibited substances noted on label.			
12. Bio-identical testosterone	Male hormone - anabolic effects	S1 prohibited substance	2004	S4 - Prescription Only Medicine	Illegal without prescription
13. Blood doping	Introduction of autologous (your own), homologous (someone else's) or heterologous (from animal) blood into your own blood stream to improve	M1 prohibited method	2004	Not a substance	Not a substance
14. Branch Chain Amino Acids (Aminobol)	Supplement containing amino acids	No prohibited substances noted on label.			
15. Caffeine		Not prohibited			
16. Carnitine (L-Carnitine)	Acts as an anti-oxidant	Not Prohibited			
17. Cerebrolysin	A mixture of different neurotrophic factors designed to improve cognitive function and in the treatment of alzheimers disease	Not prohibited		Not listed on the SUSMP	Not illegal
18. CJC-1295	Growth Hormone Releasing Hormone - assists with recovery and anabolic effects.	S2 prohibited substance	2004	Not listed on the SUSMP	Not illegal
19. Clomid	Anti-oestrogenic substance - helps prevents side effects of steroids.	S4 prohibited substance	2004	S4 - Prescription Only Medicine	Illegal without prescription

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Substance	Substance Type	WADA status	Year 1 st prohibited	TGA status	Criminal Law status
20. Co-Enzyme Q10 (Ubiquinone)	Vitamin	Not prohibited		Not listed on the SUSMP	Not illegal
21. Colostrum	Substance most commonly found in breast milk. May contain IGF-1. Any substance alleging to contain colostrum would need to be tested to show whether it contains IGF-1, and even then, it is debatable whether we could prove performance enhancement given the low bio-availability of colostrum taken orally.	Possibly prohibited, requires testing, but a very difficult case to run.	IGF-1 (if a product contains it) has been prohibited since 2004	If the colostrum contains IGF-1, then technically you would need a prescription. However, this would greatly depend on the nature of the substance	If the colostrum contains IGF-1, then technically you would need a prescription, though it is very doubtful whether law-enforcement would prosecute.
22. Comfrey	Plant derivative - used to treat wounds and sprains - transdermal	Not prohibited		Not listed on the SUSMP	Not illegal
23. Creatine	Nitrogenous organic acid - supposed to assist with	Not Prohibited		Not registered on the SUSMP	Not illegal
24. DHEA Dehydroepiandrosterone	Naturally occurring anabolic steroid	S1 prohibited substance	2004	S4 - Prescription Only Medicine	Illegal without prescription
25. Dimethyl Sulfoxide (DMSO)	Cream used to reduce joint inflammation	Not prohibited		S4 - Prescription only Medicine	Illegal without prescription
26. Doxycycline	Antibiotic used to treat infection	Not prohibited		S4 - Prescription Only Medicine	Illegal without prescription
27. EAA	More information required				
28. Fish Oils	Used for joint inflammation	Not prohibited			
29. GHRP-6	Growth Hormone Releasing Peptide - assists with recovery and anabolic effects. Described as a secretagogue - stimulates body's own secretion of GH	S2 prohibited substance	2004	Not listed on the SUSMP	Not illegal
30. Glucosamine	Supplements to assist joints	Not prohibited			

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Substance	Substance Type	WADA status	Year first prohibited	TGA status	Criminal/Law status
31. Glutamine	One of the 20 amino acids encoded by the standard genetic code	Not prohibited		Not listed on the SUSMP	Not illegal
32. Glutathione (GSH)	Tripeptide	Not prohibited			
33. GPLC	More information required				
34. HEMO RAGE	Contains 1,3-dimethylamylamine or geranium stem (DMAA) More information required	Prohibited	August 2012		
35. Hexarelin (HEX)	Growth Hormone Releasing Peptide - assists with recovery and anabolic effects Transdermal/injection	S2 prohibited substance	2004	Not listed on the SUSMP	Not illegal
36. HMB	A metabolite of the Amino Acid leucine. Used by bodybuilders	Not prohibited		Not listed on the SUSMP	Not illegal
37. Hormone (hGH)	The hormone that causes the release of IGF-1 which makes the body grow.	S2 prohibited substance	2004	S4 - Prescription Only Medicine	Illegal without prescription
38. HP-100	Supplement - supposedly helps with exercise recovery	Not prohibited		Not listed on the SUSMP	Not illegal
39. Humanofort	Supplement - supposedly helps with exercise recovery	Not prohibited		Not listed on the SUSMP	Not illegal
40. Hydralyte	Supplement used to help with hydration.	Intravenous infusions of this would be prohibited. Not prohibited when taken orally.		Not listed on the SUSMP	Not illegal

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Substance	Substance Type	WADA status	Year 1 st prohibited	TGA status	Criminal Law status
41. IGF-1 Insulin Growth Factor Long R3	Peptide - the substance the body produces when you take hGH	S2 prohibited substance	2004	S4 - Prescription Only Medicine	Illegal without prescription
42. IGF1 LR3 Insulin Growth Factor	Peptide - the substance the body produces when you take hGH	S2 prohibited substance	2004	S4 - Prescription Only Medicine	Illegal without prescription
43. Insulin	Anti-diabetes drug. Also used to assist nutrients to muscles and thereby have an anabolic effect	S2 prohibited substance	2004	S4 - Prescription Only Medicine	Illegal without prescription
44. Interleukin-6	A cytokine (secreted protein) that acts as pro and anti-inflammatory agent.	Possibly S0 - but this will be very hard to prove		Not listed on the SUSMP	Not illegal
45. Intravenous infusions and/or injections (IV)	Must not exceed 50mL per 6 hour period unless legitimately received in the course of hospital admission or clinical investigations	M2 prohibited method (other than listed)	2005	Not a substance	Not a substance
46. ITTP (Myo-inositol trispyrophosphate)	A peptide which boosts haemoglobin in the bloodstream. Used in horse racing (against the rules of racing)	S2 prohibited substance	2004	Not listed on the SUSMP	Not illegal
47. Lactaway	Anti-Oxidant supposed to help with reducing fatigue and boost performance	Not prohibited		Not listed on the SUSMP	Not illegal
48. Lube all Plus	Equine supplement for joint inflammation	Not prohibited			Not illegal
49. Mechano Growth Factor	Peptide - Similar effects as GHRPs	S2 prohibited substance	2004	Not listed on the SUSMP	Not illegal

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Substance	Substance Type	WADA status	Year it is prohibited	TGA status	Criminal Law status
50. Melanotan-1	Tanning peptide	Not prohibited		S4 - Prescription Only Medicine	Illegal without prescription
51. Melanotan-2	Tanning peptide with libido enhancement and weight loss effects	Not prohibited		S4 - Prescription Only Medicine	Illegal without prescription
52. Melatonin	Research required				
53. Naltrexone - Low dose (LDN)	Adjunctive therapy in maintenance of former opioid dependent patients provided in tablet form	Not prohibited		S4 - prescription only	
54. Platelet Rich Plasma (PRP) Treatment	Extraction of own blood, spun down and separated. Plasma extracted and re-injected into the site of injury.	Not prohibited		Not listed on the SUSMP	Performed by qualified physician
55. Probiotic					
56. Product B	Manufactured by Isagenix				
57. Progesterone	A hormone involved in pregnancy, menstruation and embryogenesis.	Not prohibited		S5 substance - use with caution	No illegal
58. Pure Whey Protein					
59. SARM S22 Selective androgen receptor modulator	Selective Androgen Receptor Modulators - same biological effect as steroids	S1 prohibited substance	2008	Not listed on the SUSMP	Not illegal
60. SARMS 4	Selective Androgen Receptor Modulator	S1 prohibited substance			
61. Scitropin	Human growth hormone	S2 prohibited substance	2004	S4 - Prescription Only Medicine	Illegal without prescription

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Substance	Substance Type	WADA status	Year 1 st prohibited	TGA status	Criminal Law status
62. Stem cell therapy	Used to treat degenerative injuries	Not prohibited			Performed by qualified physician
63. TA65 TX65	Used in anti-ageing More information required	Possibly S0			
64. Temazepam	Sleeping tablet	Not prohibited		S4 - Prescription Only Medicine	Illegal without prescription
65. Testosterone	Male hormone – anabolic effects	S1 prohibited substance	2004	S4 - Prescription Only Medicine	Illegal without prescription
66. Thymomodulin	Substance derived from calf thymus glands – supposed to assist with illness protection.	Not prohibited		Not listed on the SUSMP	Not illegal
67. Thymosin Alpha	Substance derived from calf thymus glands – supposed to assist with illness protection.	Not prohibited		Not listed on the SUSMP	Not illegal
68. Thymosin Beta 4	Substance derived from calf thymus glands – supposed to assist with illness protection.	Prohibited S2	2011	Not listed on the SUSMP	Not illegal
69. Tribestanol	ASN brand name for Tribulus – supposed natural testosterone booster	Not prohibited		Not listed on the SUSMP	Not illegal
70. Tribulus	Plant extract used in supplements – supposed natural testosterone booster	No prohibited		Not listed on the SUSMP	Not illegal
71. Vitamin A, B, C, E	IV, Injections	Not prohibited		Not listed on the SUSMP	Not illegal
72. Wiley Protocol	Hormone replacement therapy that uses bio-identical hormones. Believed to contain both DHEA and Testosterone	S1 prohibited substance (probable)	2004	Testosterone and DHEA S4 - Prescription Only Medicine	Testosterone and DHEA - Illegal without prescription
73. Winstrol	Brand name for Stanozolol (see above)	S1 prohibited substance	2004	S4 - Prescription Only Medicine	Illegal without prescription
74. Xtreme Blast	ASN Pre-workout supplement	No prohibited ingredients		Not registered on the SUSMP	Not illegal

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Substance	Substance Type	WADA status	Year prohibited	TGA status	Criminal Law status
75. Zinc (elemental)					

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APPENDIX B

Annexure 1

Anti-doping rule violations

Australian Sports Anti-Doping Authority Regulations 2006 Schedule 1 - The NAD scheme, Part 2, Division 2.1, Clause 2.01.

- (1) The purpose of this Division is to specify the circumstances and conduct that constitute breaches of the anti-doping rules, or anti-doping rule violations. Entries onto the Register of Findings will proceed based on the assertion that 1 or more of these specific rules has been violated.
- (2) Athletes and support persons are responsible for knowing what constitutes an anti-doping rule violation and the substances and methods that have been included on the prohibited list. The following anti-doping rule violations constitute breaches of the anti-doping rules:
 - (a) Presence of a prohibited substance or its metabolites or markers in an athlete's sample.
 - (i) It is each athlete's personal duty to ensure that no prohibited substance enters his or her body. Athletes are responsible for a prohibited substance or its metabolites or markers found to be present in their samples. Accordingly, it is not necessary that intent, fault, negligence or knowing use on the athlete's part be demonstrated in order to establish an anti-doping violation under this paragraph.
 - (ii) Sufficient proof of an anti-doping rule violation under this paragraph is established by either of the following:
 - A. presence of a prohibited substance or its metabolites or markers in the athlete's A sample if the athlete waives analysis of the B sample and the B sample is not analysed;
 - B. if the athlete's B sample is analysed and the analysis of the athlete's B sample confirms the presence of the prohibited substance or its metabolites or markers found in the athlete's A sample.
 - (iii) Excepting those substances for which a quantitative threshold is specifically identified in the prohibited list, the presence of any quantity of a prohibited substance or its metabolites or markers in an athlete's sample will constitute an anti-doping rule violation.

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- (iv) As an exception to the general rule established by this paragraph, the prohibited list or International Standards may establish special criteria for the evaluation of prohibited substances that can also be produced endogenously.
- (b) Use or attempted use by an athlete of a prohibited substance or a prohibited method.
 - (i) It is each athlete's personal duty to ensure that no prohibited substance enters his or her body. Accordingly, it is not necessary that intent, fault, negligence or knowing use on the athlete's part be demonstrated in order to establish an anti-doping violation for use of a prohibited substance or a prohibited method.
 - (ii) The success or failure of the use or attempted use of a prohibited substance or prohibited method is not material. It is sufficient that the prohibited substance or prohibited method was used or attempted to be used for an anti-doping rule violation to be committed.
- (c) Refusing or failing without compelling justification to submit to sample collection after notification as authorised in applicable anti-doping rules, or otherwise evading sample collection.
- (d) Violation of applicable requirements regarding athlete availability for out-of-competition testing, including failure to file required whereabouts information and missed tests that are declared based on rules that comply with the International Standard for Testing. Any combination of 3 missed tests or filing failures within 18 months as determined by anti-doping organisations with jurisdiction over the athlete will constitute an anti-doping rule violation.
- (e) Tampering or attempted tampering with any part of doping control.
- (f) Possession of prohibited substances and prohibited methods.
 - (i) Possession by an athlete in-competition of a prohibited method or a prohibited substance, or possession by an athlete out-of-competition of a prohibited method or any prohibited substance that is prohibited out-of-competition unless the athlete establishes that the possession is authorised by a therapeutic use exemption granted in accordance with the World Anti-Doping Code and the International Standard for Therapeutic Use Exemptions or other acceptable justification.
 - (ii) Possession by a support person in-competition of a prohibited method or a prohibited substance, or possession by a support person out-of-competition of a prohibited method or a prohibited substance that is prohibited out-of-competition in connection with an athlete, competition or training, unless the support person establishes that the possession is authorised by a therapeutic use exemption granted to an athlete in accordance with the World Anti-Doping Code and the International

Standard for Therapeutic Use Exemptions or other acceptable justification.

- (g) Trafficking or attempted trafficking in a prohibited substance or prohibited method.
- (h) Administration or attempted administration to an athlete in-competition of a prohibited method or prohibited substance, or administration or attempted administration to an athlete out-of-competition of a prohibited method or a prohibited substance that is prohibited out-of-competition, or assisting, encouraging, aiding, abetting, covering up or other type of complicity involving an anti-doping rule violation or an attempted anti-doping rule violation.

Annexure 2

Sporting Organisations - Definitions

Australian Sports Anti-Doping Authority Act 2006 (C'wth), Part 1, Section 4, 'Definitions'.

Sporting organisation includes an organisation that:

- (a) has control in Australia, a foreign country or internationally of one or more sports or sporting events; or
- (b) organises or administers one or more sports or sporting events; or
- (c) accredits people to take part in sporting competition; or
- (d) provides teams to compete in sporting competition; or
- (e) trains, or provides finance for, people to take part in sporting competition.

National sporting organisation, in relation to a particular sport, means:

- (a) in respect of Australia:
 - (i) a sporting organisation that is recognised by the International Sporting Federation that has international control over the sport as being the organisation responsible for administering the affairs of the sport, or of a substantial part or section of the sport, in Australia; or
 - (ii) whether or not there is an International Sporting Federation that has international control over the sport—a sporting organisation that is recognised by the ASC as being responsible for administering the affairs of the sport, or of a substantial part or section of the sport, in Australia.

ASC means the Australian Sports Commission

Sporting administration body means:

- (a) the International Olympic Committee; or
- (b) WADA; or
- (c) a National Anti-Doping Organization as defined in the World Anti-Doping Code; or
- (d) a foreign sporting organisation; or

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- (e) a national sporting organisation; or
- (f) a sporting organisation; or
- (g) a tribunal, committee or other investigative body that is associated with a body referred to in one or more of paragraphs (a) to (f); or
- (h) the ASC;

but does not include the ASADA, the Advisory Group or the ADRVP.

Annexure 3

Obligations on Sporting Administration Bodies – NAD scheme

Australian Sports Anti-Doping Authority Regulations 2006 (C'wth), Schedule 1 - The NAD scheme, Clause 2.04 (a) – (p).

A Sporting administration must:

- (a) at all times have in place, maintain and enforce anti-doping policies and practices that comply with:
 - (i) the mandatory provisions of the World Anti-Doping Code and International Standards; and
 - (ii) the NAD Scheme; and
- (b) not adopt its anti-doping policy unless it has been approved by ASADA or not substantively amend its anti-doping policy unless the amendment has been approved by ASADA; and
- (c) ensure that at all times it has the authority to enforce its anti-doping policy; and
- (d) immediately inform ASADA of an alleged breach of its anti-doping policy and cooperate with any investigation into the matter; and
- (e) provide to ASADA appropriate details or reports related to investigations, hearings, appeals and sanctions; and
- (f) provide ASADA with relevant information in a timely manner, including sporting administration body and International Federation anti-doping policies, policy amendments, policy endorsement and implementation date, athlete whereabouts information, athlete education, information relating to events and camps, lists of athletes subject to anti-doping policies and advice relating to athletes in ASADA's registered testing pool and domestic testing pool; and
- (g) ensure that other rules and regulations of the sport do not override the provisions of its anti-doping policy; and
- (h) comply with, implement and enforce its anti-doping policy to the satisfaction of ASADA; and
 - (i) submit to the operations of ASADA; and
- (j) refer all instances of possible anti-doping rule violations to ASADA for investigation and cooperate with any investigation, as required; and

- (k) allow ASADA to present anti-doping cases at hearings unless ASADA has approved the sporting administration body presenting its own case; and
- (l) recognise ASADA as having a right to appeal decisions relating to anti-doping cases, including in cases ASADA has not presented the anti-doping case at the hearing; and
- (m) accept findings by ASADA, ensure an infraction notice is issued in accordance with ASADA's recommendations in the case of an adverse finding, and enforce penalties imposed in accordance with ASADA's recommendation unless otherwise determined by a sporting tribunal; and
- (n) ensure that its members and staff cooperate with ASADA; and
- (o) promote information, education and other anti-doping programs in accordance with the World Anti-Doping Code and as requested by ASADA; and
- (p) comply with any other conditions relating to anti-doping and notified to it by the ASC that the ASC is required by legislation or by ASADA to require from sporting organisations to which the ASC provides funding, services and support.²³

²³ Australian Sports Anti-Doping Authority Regulations 2006 (C'wth), Schedule 1 - The NAD scheme, Part 2, Clause 2.04(a)-(p).

APPENDIX C

Annexure 1

ARL and NRL anti-doping policies – 2011 and 2012

See Attached

Annexure 2

AFL anti-doping code – 2010 (which was the applicable code in 2012)

See attached



Australian Government

Australian Sports
Anti-Doping Authority

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Office of the Chief Executive Officer

2 August 2013

Mr Andrew Demetriou
Chief Executive Officer
Australian Football League

Dear Mr Demetriou

Please find attached a copy of ASADA's Interim report into the investigation at the Essendon Football Club.

The Interim report contains information uncovered by the investigation as at 1 August 2013. It is important to note that ASADA's investigation is continuing – in that context, it is possible that further material may come to light that will change the nature of the evidence, or the findings in the Interim report.

Basis on which this interim report is being provided

Although ASADA's investigation of possible anti-doping rule violations is continuing, I am able to disclose information to the Australian Football League (AFL) under Article 4.7 of the AFL Anti-Doping Code and clause 4.21 of the National Anti-Doping (NAD) Scheme (Schedule 1 to the *Australian Sports Anti-Doping Authority Regulations 2006*).

Under Article 4.7 of the AFL Anti-Doping Code, ASADA has an obligation to report to the AFL on the exercise of its anti-doping functions, including its investigative functions.

The Interim report contains information that is "NAD scheme personal information" within the meaning of the *Australian Sports Anti-Doping Authority Act 2006*, and that is therefore subject to section 71 of that Act.

This information will generally also be information that does not arise out of any entry on the Register maintained under the NAD Scheme and relates to persons in connection with a possible anti-doping rule violation by athletes and support persons, and that is therefore covered by clause 4.21 of the NAD Scheme. Some of the information was collected by the AFL or has already been disclosed to the AFL.

To the extent that the interim report contains NAD Scheme personal information that the AFL did not collect and has not already been disclosed to the AFL, it cannot be disclosed to the AFL except for the purposes of the NAD scheme (section 71(1), (2)(b)). Disclosure of information under clause 4.21 of the NAD Scheme is disclosure for the purposes of the NAD Scheme and falls within the exception to the prohibition on disclosure in section 71(2)(b).

The relevant information can be disclosed to the AFL under clause 4.21 of the NAD Scheme for the purposes of, or in connection with, the administration of the NAD Scheme. The NAD Scheme would prevent the relevant information (the interim report) being made public.

I am providing the AFL with the interim report in connection with my investigation under the NAD Scheme, noting that the interim report is the culmination of our joint investigation to date and the starting point for further investigation.

Please provide me with your comments on the interim report. For example, I am particularly interested in receiving the AFL's views on the necessity for me to use my new powers to gain further information about specific substances provided to players and their contents.

I note that use and disclosure by the AFL of the information in the interim report is subject to the operation of the National Privacy Principles in the *Privacy Act 1988*. The Principles would preclude making the interim report public.

Having said that, the interim report has been redacted in a number of places. The following categories of information have been redacted from the interim report:

- Material from other Australian Government agencies that ASADA is unable to lawfully provide to the AFL;
- Internal ASADA communications that are not relevant to the investigation and all references in the footnotes to internal ASADA file references;
- Text describing conduct that appears to be a possible anti-doping rule violation not relevant to Essendon;
- Material that is relevant to other ASADA investigations; and
- Sensitive medical information.

Area of further investigation – possible use of other prohibited substances by Essendon players

The investigation has established that WADA prohibited substances such as Hexarelin, Thymosin Beta 4 and SARM S-22 were stored on the Essendon Football Club premises.

It has also been established that an Essendon support person administered Hexarelin to other Essendon personnel. At this stage, ASADA has not been able to establish that Essendon players were administered with this substance. This is also the case for SARM S-22.

During the investigation, players in interviews expressed their knowledge or their belief that they were injected with Thymosin. Based on the material uncovered during the course of the investigation, there is strong circumstantial evidence that the Thymosin that Essendon players were injected with was Thymosin Beta 4.

However, at this stage ASADA does not consider that it has sufficient evidence to establish to the comfortable satisfaction of a hearing panel that specific players were in fact administered Thymosin Beta 4.

ASADA's investigation into these matters is continuing – the commencement of the *Australian Sports Anti-Doping Authority Amendment Act 2013* will enable other lines of inquiry to be pursued with a view to establishing the substances that were in fact administered to Essendon players.

Should ASADA take the view that anti-doping rule violations can be established against one or more players in relation to the use of these substances, ASADA intends to proceed with these violations. While the availability of any defences will depend on the circumstances of each player, the evidence so far suggests that the defence of *no fault, no negligence* is unlikely to be able to be established by any player.

AOD-9604

In relation to the issue of AOD-9604, ASADA will make a public statement about its proposed approach in all sports to the enforcement of possible anti-doping rule violations involving this substance that occurred prior to the World Anti-Doping Agency's media release of 22 April 2013.

Conclusion and next steps

Should ASADA, following the conclusion of its investigation, make an assessment that it is possible that an individual or individuals have committed anti-doping rule violations, those persons will be given the opportunity to respond to those allegations at that point in time, in accordance with the scheme provided for in the *Australian Sports Anti-Doping Authority Act 2006*.

Following that process, ASADA will make recommendations to the AFL for the issuing of infraction notices to relevant persons, at which point those persons will be able to elect whether or not to exercise their right to a hearing before the AFL Anti-Doping Tribunal.

As I stated earlier in my letter, I look forward to your comments on the interim report, and will take these into account in the continuation of my investigation. Please convey these to Paul Simonsson, Director Intelligence and Investigations, at paul.simonsson@asada.gov.au.

Yours sincerely



Aurora Andruska PSM
Chief Executive Officer

Australian Sports Anti-Doping Authority investigation into activities at Essendon Football Club

ASADA met with you on 18 February 2013 to give you an overview of the ASADA's investigation process and of the possible outcomes of the investigation.

Today (20 February 2013), we have come back to take you through our agreement with the Australian Football League about how the investigation is going to proceed from this point.

"The AFL understands that the investigation is likely to be protracted, complex and lengthy.

To provide an immediate level of comfort for the Essendon players it is proposed that the following assistance be given to the players.

- First, representatives of ASADA and AFL will address the players to explain the investigative process and players rights and entitlements should they wish to come forward.
- ASADA will explain to the players that these are exceptional circumstances and the defence of no fault or negligence may be available.
- It will be explained to players that under a *no fault or negligence* defence a player can receive a complete elimination of sanction. (Ultimately whether a player receives the *no fault or negligence defence* or *substantial assistance* will depend on the individual's circumstances).
- Where a player does come forward and provides a sworn statement regarding his involvement and the involvement of any other person, ASADA and the AFL will fully explore all avenues in an attempt to provide a *no fault or negligence defence* or *substantial assistance*.
- ASADA agrees that a significant contributing factor in the consideration of a *no fault or negligence defence*, will be the extent to which players knew or suspected they had used prohibited substances at the instigation of sports science staff and took utmost caution in relation to the treatments they were receiving.
- Where ASADA forms the view that the defence of *no fault or negligence* is available in relation to a particular player, ASADA and the AFL agree that they will support the application of that defence to that player in proceedings before relevant sport tribunals.
- The AFL and ASADA will assist in providing an expedient process for those players who wish to come forward and give their version of events to assist the investigation.
- The investigation will take its normal course and will not be undermined or compromised.
- Any player that is found to have lied in the sworn statement or deliberately withheld information will be taken to have aggravating circumstances and may face a 4 year ban from sport in addition to having committed perjury."



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19 August 2013

Canberra
Sydney
Melbourne
Brisbane
Perth
Adelaide
Hobart
Darwin

Mr Andrew Dillon
General Manager – Legal and Business Affairs
Australian Football League

Via Email: Andrew.dillon@afl.com.au

Dear Mr Dillon

ASADA Investigation: Essendon Football Club

We now act for the Australian Sports Anti-Doping Authority (ASADA) and we write further to ASADA's letter dated 14 August 2013. ASADA has been informed by the solicitors for Mr Hird that they have been given access to the Data Room maintained by the AFL's legal representatives and have been able to access more than 1,300 documents.

Could you please advise us of the protocols surrounding any provision of access to documents in this data room to Mr Hird's legal representatives?

Further, can you please advise us of the basis of any access, and the protocols for any such access to material disclosed by ASADA to the AFL under clause 4.21 of the National Anti-Doping Scheme?

In addition, we note that Andrew Demetriou is reported as stating on 3AW in an interview with Neil Mitchell that the AFL Commission may hold a public hearing and that it is the AFL's "intention to release" the Interim Report.

ASADA also notes the comments attributed to Mr Demetriou on the AFL.com website in which it states that "he corrected claims that the interim ASADA report could not be used at the hearing" and that he said "the plan was to refer to ASADA's report in the hearing".

ASADA notes that any public disclosure of the Interim Report or its use in a public hearing would be contrary to the NAD Scheme, the *Privacy Act 1988* and the basis on which it was supplied to the AFL.

A2125626

We seek your urgent response by 4.00pm today, failing which ASADA may take such further action as it is advised without further notice.

Yours sincerely



Craig Rawson

Senior Executive Lawyer

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M 0419 230 709

craig.rawson@ags.gov.au



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Office of the Chief Executive Officer

8 August 2013

Mr Andrew Demetrfou
Chief Executive Officer
Australian Football League

Andrew
Dear Mr Demetrfou

I refer to my correspondence to you dated 2 August 2013 and 7 August 2013 (attached). Please find attached an electronic Microsoft Word version of the report which is a copy of the same Interim Report disclosed to you previously with some further alterations in redactions.

I draw your attention to the section in our 2 August 2013 letter that is titled "Basis on which this interim report is being provided". Please note that the attached report is being provided to you on exactly the same basis as outlined on 2 August 2013. We ask that you please attach the 2 August 2013 letter, 7 August 2013 letter and this letter to the attached report so that anyone who has access to the attached report can read the basis on which the Interim Report is being provided by ASADA.

Can I draw your attention to the sections in my 2 August 2013 letter which prevent the publication of any of the material in the report under the NAD Scheme and Privacy Act.

Yours sincerely

Aurora Andruska

Aurora Andruska PSM
Chief Executive Officer



Australian Government

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Office of the Chief Executive Officer

12 August 2013

Mr Andrew Demetriou
Chief Executive Officer
Australian Football League

Dear Mr Demetriou

I refer to my correspondence to you dated 2 August 2013, 7 August 2013 and 8 August 2013 (attached). Please find attached an electronic Microsoft Word version of the report which is a copy of the same Interim Report disclosed to you previously with some further alterations in redactions.

I draw your attention to the section in our 2 August 2013 letter that is titled "Basis on which this interim report is being provided". Please note that the attached report is being provided to you on exactly the same basis as outlined on 2 August 2013. We ask that you please attach the 2 August 2013 letter, 7 August 2013 and 8 August 2013 letter and this letter to the attached report so that anyone who has access to the attached report can read the basis on which the Interim Report is being provided by ASADA.

Can I draw your attention to the sections in my 2 August 2013 letter which prevent the publication of any of the material in the report under the NAD Scheme and Privacy Act.

Yours sincerely

Aurora Andruska PSM
Chief Executive Officer



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Mr Andrew Dillon
General Counsel
Australian Football League

By email: andrew.dillon@afl.com.au

Dear Mr Dillon,

This letter follows on from my email to you of 14 August 2013. As I mentioned in that email, ASADA has received correspondence from the solicitors for Mr Hird regarding their client's charge sheet and supporting material (described in the Ashurst letter as the "Statement of Grounds").

Ashurst asserts that the supporting material that the AFL has attached to their client's charge sheet refers to "evidence and findings" contained in the ASADA Interim Report. The Ashurst letter also asserts that the Statement of Grounds "reproduces evidence" contained in the ASADA interim report.

While ASADA is not presently in a position to assess the veracity of the assertions in the Ashurst correspondence, given that correspondence, it is worth ASADA restating the grounds on which the Interim Report was provided to the AFL.

ASADA provided its Interim Report to the AFL on 2 August 2013 under cover of a letter which stated (inter alia):

Basis on which this interim report is being provided

Although ASADA's investigation of possible anti-doping rule violations is continuing, I am able to disclose information to the Australian Football League (AFL) under Article 4.7 of the AFL Anti-Doping Code and clause 4.21 of the National Anti-Doping (NAD) Scheme (Schedule 1 to the *Australian Sports Anti-Doping Authority Regulation 2006*).

Under Article 4.7 of the AFL Anti-Doping Code, ASADA has an obligation to report to the AFL on the exercise of its anti-doping functions, including its investigative functions.

The interim report contains information that is "NAD scheme personal information" within the meaning of the *Australian Sports Anti-Doping Authority Act 2006*, and that is therefore subject to section 71 of that Act.

This information will general also be information that does not arise out of any entry on the Register maintained under the NAD Scheme and relates to persons in connection with a possible anti-doping rule violation by athletes and support persons, and that is therefore covered by clause 4.21 of the NAD Scheme. Some of the information was collected by the AFL or has already been disclosed to the AFL.

To the extent that the interim report contains NAD Scheme personal information that

the AFL did not collect and has not already been disclosed to the AFL, it cannot be disclosed to the AFL except for the purposes of the NAD scheme (section 71(1), (2)(b)). Disclosure of information under clause 4.21 of the NAD Scheme is disclosure for the NAD Scheme and falls within the exception of the prohibition on disclosure in section 71(2)(b).

The relevant information can be disclosed to the AFL under clause 4.21 of the NAD Scheme for the purposes of, or in connection with, the administration of the NAD Scheme. The NAD Scheme would prevent the relevant information (the interim report) being made public.

I am providing the AFL with the interim report in connection with my investigation under the NAD Scheme, noting that the interim report is the culmination of our joint investigation to date and the starting point for further investigation.

A copy of this letter is attached.

Further versions of ASADA's Interim report (with alterations in redactions) were provided to the AFL on 7, 8 and 12 August 2013. On each occasion the covering letter accompanying provision of the Interim Report specifically confirmed that the Interim Report had been provided to the AFL on the same basis as outlined in ASADA's letter of 2 August 2013. I note the AFL has not sought to take issue with ASADA about the basis on which the Interim Report has been provided to it.

In ASADA's view, there is a distinction between providing the Interim Report to Essendon to get its comments for the purpose of the ongoing investigation into possible anti-doping rule violations and providing it as a basis for bringing disciplinary proceedings against Essendon and its personnel for breaching the AFL Rules.

ASADA is concerned about the suggestion in the Ashurst letter that the AFL has, and proposes, to use "evidence and findings" contained in the Interim Report in its Statement of Grounds and the AFL's disciplinary hearing of the charges. ASADA is concerned that such evidence and findings from the Interim Report may include NAD Scheme personal information that the AFL did not collect and has not already been disclosed to the AFL, for the purpose of initiating and prosecuting charges under the AFL Rules. Such use would not be consistent with the purpose for which ASADA expressly provided the Interim Report to the AFL and may not be consistent with the National Privacy Principles.

ASADA would object to the use by the AFL for its internal disciplinary purposes, the evaluations, opinions and conclusions expressed by ASADA's investigators contained in the interim report. Obviously, ASADA does not object to the AFL using material which the AFL itself has sourced such as the Deloitte material.

My email to you of yesterday also requested that you provide ASADA with a copy of the Statement of Grounds from the AFL so that we were in a position to respond to the Ashurst letter. In response, you stated that you would need to obtain legal advice on the question of whether this material could be provided to ASADA. I now request that you expedite this request to enable ASADA to assess the veracity of the Ashurst assertions.

Furthermore, I seek your written confirmation by 4.00pm 16 August 2013, that:

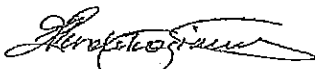
- (a) the AFL has accepted and used the Interim Report and the information in it solely

- on the basis set out in ASADA's letter dated 2 August 2013 (extracted above); and
- (b) the AFL has not used, and will not use, personal information contained in the Interim Report, which may include NAD Scheme personal information that the AFL did not collect and has not already been disclosed to the AFL, for the purpose of initiating and prosecuting charges under the AFL Rules.

If there is a difficulty about meeting this time frame could you please let us know the reason for this and when we can expect to have a substantive response.

I look forward to your prompt response. Please contact me if you have any queries.

Yours sincerely



Elen Perdikiogiannis
General Manager Anti-Doping Programs and Legal Services