



Australian Government
Department of Health

Ministerial Submission Standard

MS17-000374 Version (0)
Date sent to MO: 27/02/2017

To: Minister Hunt

Subject: SUPPLEMENTARY ADVICE – ESSENDON FOOTBALL CLUB DOPING
MATTER

Critical Date: 27 February 2017 – Requested by the Minister's office

Reason: Media reporting of 24 February 2017 has led to further speculation regarding a possible Senate Inquiry into the Essendon Football Club doping matter.

Recommendations: That you:			
1. Note the referenced reporting of 24 February 2017 relates to private discussions in August 2013 between Essendon Football Club senior officials regarding potential sanctions by the Australian Football League (AFL).		1. Noted	
2. Note that at the time in question the investigation into possible anti-doping rule violations by Essendon players and support staff was ongoing, and separate to the matter of potential AFL sanctions against Essendon for governance failings.		2. Noted	
3. Note that the 'Justice for the 34' group continue to lobby, including directly to Ministers, for a Senate Inquiry into sports anti-doping in Australia, particularly the ASADA investigation into doping at the Essendon Football Club.		3. Noted	
Signature:/...../2017 Comments:			
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Issues:

- On 24 February 2017 you requested advice as to whether a report contained in the Herald-Sun newspaper of that day changed previous advice that information contained in correspondence received by your office regarding the investigation into doping at the Essendon Football Club by the Australian Sports Anti-Doping Authority (ASADA) contained no new or substantive information (MS17-000325 of 23 February 2017).

2. The Herald-Sun reporting related to a purported recording of a private meeting of Essendon Football Club senior officials on 8 August 2013 in which the officials discuss approaches to possible imminent sanctioning of the Club by the Australian Football League (AFL) over the 2012 Essendon injections program, following the receipt of an interim report of the joint AFL-ASADA investigation from ASADA. Those responsible and the motivation for the release of the recording are unknown.
3. On 13 August 2013 the Essendon Football Club and a number of senior officials were charged by the AFL for breaching the AFL Rules, specifically engaging in conduct that is unbecoming or likely to prejudice the interests or reputation of the Australian Football League or to bring the game of football into disrepute.
4. The sanctioning of the Essendon Football Club and senior club officials by the AFL did not relate to individual anti-doping rule violations. At that time the joint AFL-ASADA investigation into possible doping violations remained ongoing, with the AFL explicitly noting that infraction notices under the AFL Anti-Doping Code against individual Essendon FC players or other persons could also result if further information comes to hand.
5. The recorded discussion relates to circumstances that applied at that time and have been overtaken by many events in the interim, including affirmation of the validity of the joint AFL-ASADA investigation by the Federal Court and Full Bench of the Federal Court in 2014; the January 2016 Court of Arbitration for Sport (CAS) *de-novo* hearing and verdict that 34 Essendon players committed doping violations; and the October 2016 dismissal of an appeal by the players of the CAS verdict by Swiss Federal Court. The Essendon Football Club also pleaded guilty to two breaches of the Victorian Occupational Health and Safety Act 2004 in the Melbourne Magistrates Court over the injections program.
6. The decision of the Swiss Federal Court represents the final step in the legal anti-doping processes associated with the Essendon matter. The sanctions applied by the CAS have been served and those affected are free to be involved in the AFL or any other sporting competition.
7. Separately, the 'Justice for the 34' (J34) group continue to lobby widely, including to Ministers, members of the opposition and members of the crossbench, for a Senate Inquiry into sports anti-doping in Australia and in particular the joint AFL-ASADA investigation into doping at the Essendon Football Club. According to media reporting, the J34 group has claimed to have provided you with new information to justify the calling of a government inquiry, with a view to having the CAS verdict that the 34 players committed doping violations overturned. Further media reporting of 25 February 2017 indicates the J34 group consider the recorded discussion as additional evidence the Essendon Football Club was unfairly targeted in the anti-doping investigation.
8. It is the Department's strong view that, while it is understandable diverse and deeply-held opinions on this issue will persist and some may feel aggrieved by the penalties imposed on the Club and players, the matters at hand have been comprehensively reviewed during the exhaustive legal processes outlined above, and the various allegations and opinions held do not invalidate the deliberations and findings of the courts.
9. Further, the anti-doping rules contained in the World Anti-Doping Code and enshrined within Australia's anti-doping arrangements not only support the rights of the clean athlete to participate in fair sport on local, national and international levels, but critically, protect the health and welfare of those participating in sport by eliminating use of doping substances, which often are not approved for human use and may have long term significant health consequences.
10. An internal review of the AFL's handling of the Essendon matter is planned to be made public prior to the beginning of the 2017 AFL premiership season.

Background:

On 24 February 2017 the Herald-Sun newspaper released a purported recording of a private meeting of Essendon Football Club senior officials held on 8 August 2013. Both audio footage and a transcript of the discussion were released. The Department cannot independently verify the provenance of recording, though has no reason to doubt its authenticity and notes there appears to be little question of this in the ensuing public commentary.

The recorded discussion relates to consideration of the Club's approach to possible AFL sanctions for the 2012 injections program at Essendon, following the receipt by the AFL of an interim report of the joint AFL-ASADA investigation. On 13 August 2013 the AFL sanctioned Essendon, imposing a \$2 million penalty; removing Essendon from the 2013 finals series; stripping draft picks; and fining or suspending a number of senior Club officials. While it is important to contextualise the recording as a single discussion relevant to the prevailing circumstances of the time, it is perhaps noteworthy that comments within the recording suggest the group were unaware of what actually happened during the Club's injections program, but considered there was insufficient time to establish this in light of imminent legal action. The lack of any consideration of or concern for the potential implications for the health and welfare of the players subject to the injections program, following the receipt of the ASADA interim report, also appears conspicuous.

Current Chief executive Officer of the AFL, Mr Gillon McLachlan, is accused in the recordings of misleading the officials present in related negotiations. Mr McLachlan has refuted those allegations in media statements of 24 February 2017.

The sanctions imposed by the AFL on Essendon in August 2013 did not relate to individual anti-doping rule violations by Essendon players or support staff, as at the time the AFL-ASADA investigation into possible doping violations remained ongoing. Notwithstanding, the release of the recording has further raised suggestions by some of the need for a Parliamentary Inquiry into the AFL-ASADA investigation of the Essendon injections program, including questioning of the Prime Minister on the matter during a radio interview on 3AW, to which the Prime Minister responded he has not formed a considered view.

Relevance to Election Commitments / Budget Measures: N/A

State / Territory / Stakeholder Engagement: N/A

Financial Implications: N/A

Sensitivity: There is an expectation you will consider the merits of commissioning a parliamentary inquiry into the Essendon doping matter after reviewing 'new information'.

Rural and Regional Considerations: N/A

Regulatory Burden Implications and/or Deregulation Opportunities: N/A

Timing/Handling (including legislative changes): N/A

Consultations: N/A

Communication/Media Activities: N/A.

Attachments: Nil