

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 ½ 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)

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.