



Potential legal cases arising from Operation Cobia

Description/Background

- The Project Cobia legal team have been assessing information and evidence obtained by ASADA investigators during Operation Cobia to ascertain:
 - whether there is sufficient evidence to commence proceedings under the National Anti-Doping (NAD) scheme and the relevant anti-doping policies of the NRL/AFL; and
 - if there is sufficient evidence, what the appropriate sanctions for individuals are and the best strategy to progress the potential legal cases.

- ASADA has forwarded 3 written notifications to athletes and support persons in accordance with clause 4.07A of the NAD scheme. These letters are colloquially known as 'show cause' letters. The notifications have been forwarded to:

- [REDACTED]
- [REDACTED]
- [REDACTED]

- There remain [REDACTED] athletes and support persons who may be subject to the next round of show cause letters in the AFL and NRL.¹

- [REDACTED]
- [REDACTED]
- [REDACTED]

- This strategy takes into account considerations as to the relative level of fault attributable to players as distinct from support personnel, and the desirability of minimising complex and protracted litigation if possible.

Status

[REDACTED]

[REDACTED]

Issues

- [REDACTED]

- In addition, we are currently preparing documentation to facilitate your consideration of these matters. We are putting together CEO recommendations for:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

for your consideration in the week commencing 27 May 2014.

- Once documentation is finalised in relation to the [REDACTED] we will provide you with material in the week commencing 27 May 2014 allow you to make decisions under clause 4.07A of the NAD Scheme (that is, to take cases forward).

Next Steps

- [REDACTED]

NOTE: A document outlining the potential cases is at Attachment A.

Project Plan Parameters and Key Undertakings

- The Project Plan was developed on 7 May 2014 and will be updated on a weekly basis
- CEO will be provided with a weekly update on case progression

Task Name	Duration	Negotiable	Rationale
Draft Show Cause Pack	10 days	Yes	Case complexity, daily capacity and staffing availability
Copy and Send	1 day	Yes	Daily capacity and staffing availability
Counsel to Review	2-3 days	Yes	Counsel availability
Show Cause Letter and Pack to CEO	7 - 10 days	Yes	CEO availability. CEO will be receiving substantial composite packs (for EFC players potentially 1000+ pps)
Show Cause letter to Participant	10 Days	Yes	Applicable if Participant requests an extension for and the CEO agrees to extend the submission period
Prepare ADRVP Pack	10 -14 Days	Yes	Case complexity, finalisation of pack relies on the expiration of the 10 day period for a submission to be provided, other packs requiring completion
Scheduling of ADRVP Meetings	1 day	Yes	Subject to Panel member availability and Secretariat. Case load and complexity of matter affects the number of matters heard in at a sitting.
Decision, Entry on RoF and notification	As soon as practicable	No	Legislation requires Athlete or Support Personnel to be notified of the ADRVP's decision as soon as practicable
RoF Letter	28 Days to Appeal to AAT	No	This is reliant on the decision of the Panel and Entry onto the RoF
Letter to NSO (National Sporting Organisation) with CEO recommendation on violation and sanction			This is reliant on the decision of the Panel and Entry onto the RoF, crafting of letter for CEO sign off and subject to staffing availability
Infraction Notices		No	In professional sports, the Sporting body, ie. The AFL or NRL issue their own infraction notices, on CEO recommendation of sanction and violation(s)
Without Prejudice Negotiations		Yes	Legal Representative availability for both ASADA and Participant

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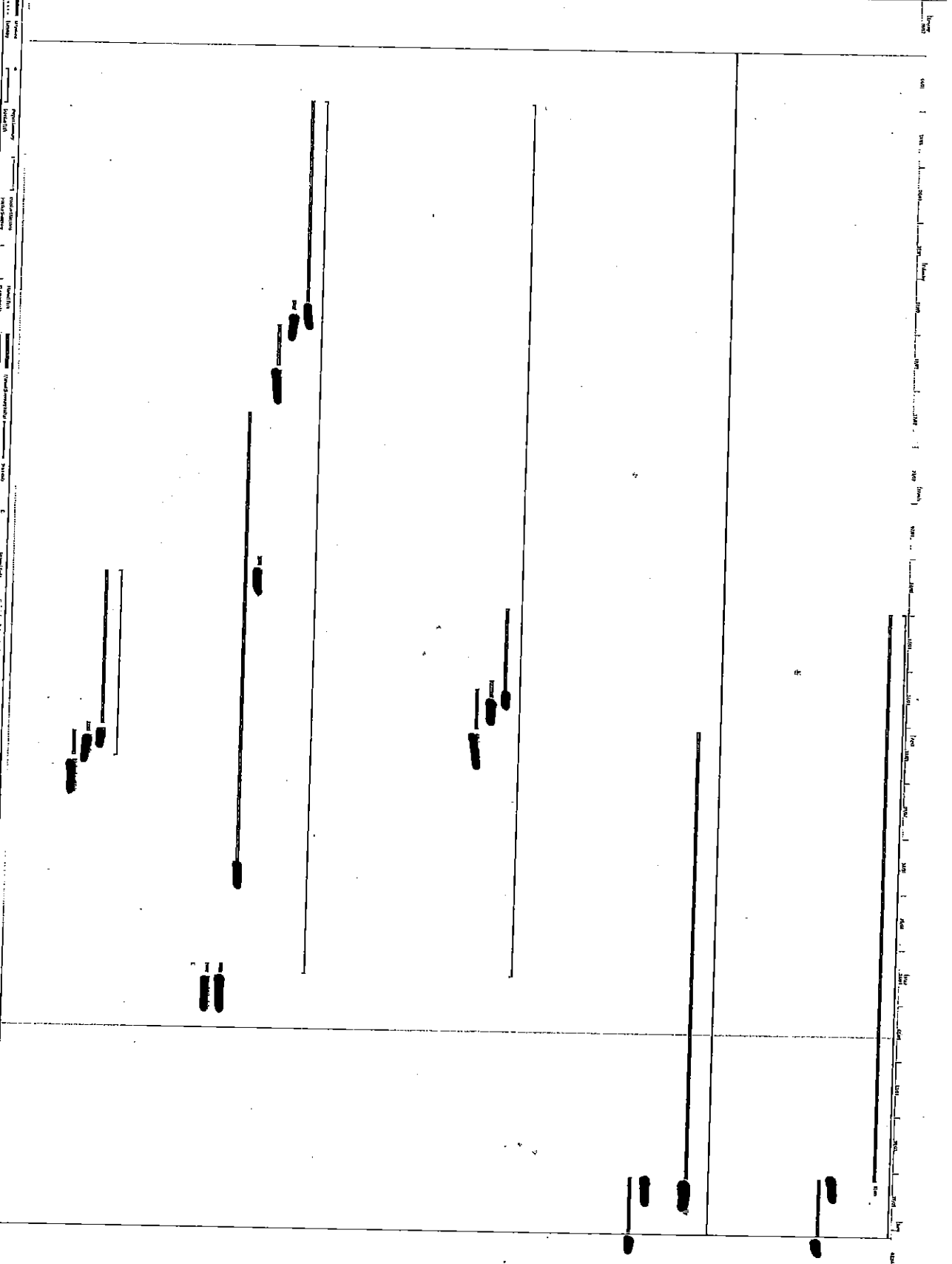
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Kate Corkery

From: Chris.Reid@health.gov.au
Sent: Thursday, January 30, 2014 12:21 PM
To: Helen Thorne
Cc: David.Learmonth@health.gov.au; Andrew Godkin
Subject: Draft Terms of Reference for Aurora's consideration - legal in confidence
[SEC=UNCLASSIFIED]
Attachments: Justice Downes TOR Draft 3 (D14-200954) (D14-204473).DOCX

Dear Aurora,

I attach for your consideration and comment (if any) our current draft Terms of Reference for Justice Downes' report/advice to you.

Let me know of any changes you might like to suggest - happy to discuss

Regards

Chris Reid

General Counsel
Department of Health
GPO Box 9848 CANBERRA ACT 2601
Ph: 02 6289 5822 Email: chris.reid@health.gov.au

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ASADA - DRAFT TERMS OF REFERENCE

1. As soon as practicable, provide a report to the ASADA Chief Executive Officer (CEO), consistent with her functions and duties under the ASADA Act, advising her:
 - how best to finalise each of the various allegations which form part of the investigations, having regard to the evidence obtained to date, the potential and likelihood of obtaining further evidence, the elements required to be proven to establish the relevant violation, the relevant burden of proof under the WADA Code, and any other relevant matter;
 - how best to ensure all lawful and appropriate avenues of investigation have been pursued, having regard to the facts and circumstances of the investigations and ASADA's powers and functions;
 - of any deficiencies in investigating the various allegations; and
 - where appropriate, about the integrity and legality of the acquisition and evaluation of evidence used or proposed to be used to support any adverse findings in the investigations,and
2. Separately and subsequently, subject to confirmation by the CEO (which will have regard to your availability and the availability of funding) following the provision of the first report, to provide a further report setting out :
 - an assessment of the adequacy of ASADA's current powers and processes in carrying out its statutory functions and confronting the challenges of the contemporary doping environment;
 - advice concerning the adequacy and appropriateness of information sharing provisions to ensure that the capacity to effectively and appropriately detect and penalise Anti-Doping Rule Violations is optimised; and
 - identification of any other means or opportunities to strengthen the anti-doping framework in Australia, consistent with but not limited by the provisions of the WADA code.

The CEO will make the reports available to the Minister for Sport, subject to any privacy and confidentiality requirements.

In these terms of reference:

- 'the Investigations' means the investigations into various allegations of violation of anti-doping rules within the Australian Football League and the National Rugby League commenced by ASADA, in 2013??

'the WADA Code' means the World Anti-Doping Code as defined in section 5 of the *Australian Sports Anti-Doping Authority Act 2006*.

Kate Corkery

From: [REDACTED]
Sent: Friday, January 31, 2014 6:57 PM
To: Aurora Andruska
Cc: Helen Thorne; Andrew Godkin; [REDACTED]
Subject: Fw: draft letter [SEC=UNCLASSIFIED]
Attachments: Draft Letter (3).docx; TORs.DOCX; Draft Letter (4).docx

Hi Aurora

note updated letter as per most recent conversation

thanks

[REDACTED]
Assistant Secretary A/g
National Integrity of Sport Unit
Department of Health
Ph +61 2 6289 5363 | +61 438 272 720

MDP 705 – GPO Box 9848 Canberra ACT 2601
[REDACTED]

From: [REDACTED]
To: aurora.andruska@asada.gov.au,
Cc: "Helen Thorne" <Helen.Thorne@asada.gov.au>, Andrew Godkin/SPORT/Health@Health.gov.au
Date: 31/01/2014 18:35
Subject: Fw: draft letter [SEC=UNCLASSIFIED]

Hi Aurora

attached is updated draft letter post discussions with Andrew. Also attached are ToRs as the attachment to the draft letter

best regards

[REDACTED]
Assistant Secretary A/g
National Integrity of Sport Unit
Department of Health
Ph +61 2 6289 5363 | +61 438 272 720


MDP 705 – GPO Box 9848 Canberra ACT 2601
[REDACTED]

From: [REDACTED]
To: aurora.andruska@asada.gov.au,
Cc: "Helen Thorne" <Helen.Thorne@asada.gov.au>, Andrew Godkin/SPORT/Health@Health.gov.au
Date: 31/01/2014 14:25
Subject: draft letter [SEC=UNCLASSIFIED]

Hi Aurora

please find attached draft letter as discussed with Andrew

thanks


Assistant Secretary A/g
National Integrity of Sport Unit
Department of Health
Ph +61 2 6289 5363 | +61 438 272 720

MDP 705 – GPO Box 9848 Canberra ACT 2601

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Justice Garry Downes AM QC FCI Arb

[REDACTED]
[REDACTED]

Dear Justice Downes,

Advice and report on NRL and AFL investigations

I refer to a proposal that you provide the Australian Sports Anti-Doping Authority ('ASADA') with advice about its investigations into doping in the NRL and AFL.

This letter is to confirm that I wish you to undertake the task outlined in the Terms of Reference at Attachment A to this letter. It would be desirable that you complete the task as soon as is reasonably possible and preferably by the end of April 2014.

I confirm that ASADA is able to offer you a daily rate of [REDACTED] for the time taken to perform the task. ASADA will make available the services of a person to assist you with the task, and the Department of Health will make available a lawyer to assist you as required. Arrangements will be made to provide you with office accommodation in Sydney, and for an office in Canberra for those occasions when you need to visit Canberra. [REDACTED]

If you are able to accept this offer, I would be grateful if you would sign the second copy of this letter which is attached, in the space provided for your signature, and return that copy of the letter to me, along with a declaration confirming that you have no conflict of interest in undertaking the task.

Please do not hesitate to contact me if you have any questions about any of the above.

Yours sincerely

Aurora Andruska

Chief Executive Officer

I agree the terms set out in this letter

.....

Justice Garry Downes

Date:.....

TERMS OF REFERENCE

As soon as practicable, provide a report to the ASADA Chief Executive Officer (CEO), consistent with her functions and duties under the ASADA Act, advising her:

- how best to finalise each of the various allegations which form part of the investigations, having regard to the evidence obtained to date, the potential and likelihood of obtaining further evidence, the elements required to be proven to establish the relevant violation, the relevant burden of proof under the WADA Code, and any other relevant matter; and
- how best to ensure all lawful and appropriate avenues of investigation have been pursued, having regard to the facts and circumstances of the investigations and ASADA's powers and functions.

The CEO will make the results of the report available to the Minister for Sport, subject to any privacy and confidentiality requirements.

Kate Corkery

From: Chris.Reid@health.gov.au
Sent: Friday, January 31, 2014 2:45 PM
To: Helen Thorne
Cc: Andrew Godkin
Subject: Fw: URGENT:Email for Aurora Andruska - Counsel fees - Garry Downes QC [DLM=Sensitive-Legal]

Dear Aurora,

As discussed I attach a copy of the approval given by Attorney-General's Department for the fees to be paid to Justice Gary Downes QC.

The work required to be done by Justice Downes under the proposed Terms of Reference requires the provision of legal advice, in his role as a Senior Counsel.

[REDACTED]

Regards

Chris Reid

General Counsel
Department of Health
GPO Box 9848 CANBERRA ACT 2601
Ph: 02 6289 5822 Email: chris.reid@health.gov.au
----- Forwarded by Chris Reid/EXEC/Health on 31/01/2014 14:34 -----

From: OLSC <olsc@ag.gov.au>
To: [REDACTED]
Cc: "Chris.Reid@health.gov.au" <Chris.Reid@health.gov.au>
Date: 30/01/2014 16:35
Subject: RE: URGENT: Counsel fees - Garry Downes [DLM=Sensitive-Legal]

Sensitive-Legal

Dear [REDACTED]

I refer to your counsel fee application for an ongoing Commonwealth rate [REDACTED] for Mr Gary Downes QC. Thank you for the information you provided.

As the Attorney-General's delegate for the purposes of approving rate requests above the threshold amounts set out in paragraph 5 of appendix D to the Directions, I approve an ongoing rate of [REDACTED] to be effective from 30 January 2014. In approving this rate, this Office has taken into consideration parity with counsel of comparable seniority, the requirements of the *Legal Services Directions 2005*, and the information you provided.

Please note that agencies may apply to OLSC for one-off rates in particular matters, should they wish to engage counsel at a higher rate than the approved ongoing rate.

If you have any queries in respect to this approval, please contact [REDACTED] (the action officer for this application) on [REDACTED]

Kind regards

[REDACTED]
Acting Assistant Secretary

Office of Legal Services Co-ordination
Attorney-General's Department

lucykeogh@ag.gov.au

6141 3440

**We acknowledge the traditional custodians of this land and
celebrate their ongoing culture and contribution to society.**

From: [REDACTED]
Sent: Thursday, 30 January 2014 2:36 PM
To: OLSC
Cc: Chris.Reid@health.gov.au
Subject: URGENT: Counsel fees - Garry Downes [DLM=Sensitive-Legal]
Importance: High

LEGAL-IN-CONFIDENCE

Please find attached this urgent request for a Commonwealth rate for Justice Downes. If you have any queries, you may call me on the number below but please feel free to contact Chris Reid, General Counsel for the Department of Health, on 02 6289 5822.

Regards,

[REDACTED] Senior Lawyer/ Assistant to General Counsel
Legal Services Branch, Legal & General Counsel
Department of Health
☎ (02) 6289 3108
✉ MDP 350, GPO Box 9848, Canberra ACT 2601

<http://www.adobe.com/>

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5

MEMORANDUM OF UNDERSTANDING

BETWEEN

DEPARTMENT OF HEALTH

ABN 83 605 426 759

AND

AUSTRALIAN SPORTS ANTI-DOPING AUTHORITY

ABN 91 592 527 503

IN RELATION TO FUNDING FOR

**THE ENGAGEMENT OF THE HON GARRY DOWNES
TO ASSIST ASADA INVESTIGATIONS**

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PARTIES

DEPARTMENT of HEALTH ABN 83 605 426 759 ('Us' or 'We' or 'Our' as the case requires)

AND

AUSTRALIAN SPORTS ANTI-DOPING AUTHORITY as established under the *Australian Sports Anti-Doping Authority Act 2006* ABN 91 592 527 503

('You' or 'Your' as the case requires)

PREAMBLE

- A. The Australian Government is committed to the elimination of doping in sport. Australia is a signatory to the United Nations Educational, Scientific and Cultural Organisation (UNESCO) International Convention Against Doping in Sport. As such, Australia is committed to supporting the international effort against doping in sport and the operation of a rigorous anti-doping regime in Australia.
- B. In addition to the testing of blood and urine to detect the presence of banned substances, anti-doping rule violations are detected through non analytical means. This can be achieved through investigations and intelligence gathering
- C. The Australian Sports Anti-Doping Authority (ASADA) is the Australian Government agency that is recognised by the World Anti-Doping Agency (WADA) as the National Anti-Doping Organisation for Australia.
- D. ASADA has experienced a substantial increase in its investigative workload due to the conduct of investigations following the outcomes of the Australian Crime Commission (ACC) report 'Organised Crime and Drugs in Sport'. Assistance is now being provided to bring its investigations to a conclusion.
- E. The Australian Government has agreed that the National Integrity of Sport Unit (NISU) within the Department of Health (DoH) will provide funding to ASADA to engage the Hon. Garry Downes until no later than 30 April 2014 to assist ASADA in its investigations process.
- F. This MOU sets out the basis on which the funding is to be provided.
- G. The Parties are aware and agree that this MOU is not legally binding, but they nevertheless agree to act in accordance with its terms.

1. INTERPRETATION

- 1.1 In this MOU, unless the contrary intention appears:

'ABN' has the same meaning as it has in section 40 of the *A New Tax System (Australian Business Number) Act 1999* (Cth);

'Activity' means the activity described in Schedule 1;

'Activity Material' means all Material:

- (a) brought into existence for the purpose of performing the Activity;
- (b) incorporated in, supplied or required to be supplied along with the Material referred to in paragraph (a); or
- (c) copied or derived from Material referred to in paragraphs (a) or (b);

'Activity Period' means the period specified in Schedule 1 during which the Activity will be completed;

'Adjustment Note' has the same meaning as it has in section 195-1 of the GST Act;

'ASADA' means the Australian Sports Anti-Doping Authority;

'ASADA Act' means the *Australian Sports Anti-Doping Authority Act 2006*;

'ASADA Regulations' means the *Australian Sports Anti-Doping Authority Regulations 2006*;

'Business Day' means in relation to the doing of any action in a place, any day other than a Saturday, Sunday, or public holiday in that place;

'Completion Date' means the day after You have done all that You are required to do under clauses 4 [Management of Funding] and 5 [Activity and Financial Reports] of this MOU to Our satisfaction;

'DoH' means the Department of Health;

'Date of this MOU' means the date written on the execution page of this MOU, and if no date or more than one date is written there, then the date on which this MOU is signed by the last Party to do so;

'Electronic Communication' has the same meaning as in the *Electronic Transactions Act 1999 (Cth)*;

'Financial Year' means each period from 1 July to the following 30 June occurring during the Term of this MOU, or any part of such a period occurring at the beginning or end of the Term of this MOU;

'FMA Act' means the *Financial Management and Accountability Act 1997*;

'Funding' or **'Funds'** means the amount or amounts payable under this MOU to you by us as specified in Schedule 1;

'GST' has the meaning as given in section 195-1 of the GST Act;

'GST Act' means the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*;

'Information System' has the same meaning as in the *Electronic Transactions Act 1999 (Cth)*;

'Item' means an item in the Schedule;

'MOU' means this document and includes any schedules and annexures;

'NAD Scheme' means the National Anti-Doping Scheme that is contained in Schedule 1 to the ASADA Regulations;

'Party' means a party to this MOU;

'Report' means Activity Material that is provided to Us for reporting purposes on matters including the use of the Funding, whether or not Milestones have been achieved, progress reports and evaluations of the Activity or undertakings of this MOU, as stipulated in Schedule 1;

'Schedule' refers to the schedule or schedules to this MOU;

'Taxable Supply' has the same meaning as it has in the GST Act;

'Term of this MOU' refers to the period described in subclause 2.1;

'Us', 'We' and 'Our' includes Our officers, delegates, employees and agents, and Our successors;

'World Anti-Doping Code' means the core document, monitored by the World Anti-Doping Agency, that provides the harmonised framework for anti-doping policies, rules, and regulations within sport organisations and among public authorities.

'You' and 'Your' includes, where the context permits, Your officers, employees, agents and subcontractors, and Your successors.

1.2 In this MOU, unless the contrary intention appears:

- (a) words in the singular number include the plural and words in the plural number include the singular;
- (b) words importing a gender include any other gender;
- (c) words importing persons include a partnership and a body whether corporate or otherwise;
- (d) all references to clauses are to clauses in this MOU;
- (e) all references to dollars are to Australian dollars and this MOU uses Australian currency;
- (f) reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth and, if it has been or is amended, is a reference to that statute or other legislation as amended;
- (g) an uncertainty or ambiguity in the meaning of a provision of this MOU will not be interpreted against a Party just because that Party prepared the provision; and
- (h) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

1.3 The Schedules (and annexures and documents incorporated by reference, if any) form part of this MOU. In the event of any conflict or inconsistency between any part of:

- (a) the terms and conditions contained in the clauses of this MOU;
- (b) the Schedules;
- (c) the annexures, if any;
- (d) documents incorporated by reference, if any;

then the material mentioned in any one of paragraphs (a) to (d) of this subclause 1.3 has precedence over material mentioned in a subsequent paragraph, to the extent of any conflict or inconsistency.

2. TERM OF THIS MOU

2.1 The Term of this MOU commences on the Date of this MOU and, unless terminated earlier, it expires on the Completion Date.

3. PAYMENT

3.1 Subject to sufficient funds being available for the Activity and compliance by You with this MOU, We agree to provide You with the Funding at the times specified in Schedule 1.

3.2 Both Parties acknowledge that the provision of Funding is subject to funds being made available as part of the budget processes for that year.

3.3 Without limiting Our rights, We may withhold or suspend any payment in whole or in part until You have fulfilled Your undertakings under this MOU.

4. MANAGEMENT OF FUNDING

4.1 You agree to carry out the Activity within the Activity Period and in accordance with this MOU.

4.2 You will manage the Funding under this MOU in accordance with Your obligations under the FMA Act.

4.3 You will expend the Funding only for the purposes set out in Schedule 1.

4.4 If, at the completion of the Activity Period, You have unexpended Funds (which does not include those Funds approved by Us as being required for expenses incurred during the Term and which fall for payment thereafter) You may seek Our agreement to retain the Funds and use them for the purposes agreed by Us:

4.5 If We do not agree to You retaining the Funds under subclause 4.4 You agree to return the Funds to Us within 20 Business Days of receiving notice that You are to return the Funds.

4.6 We are not responsible for the provision of additional money to meet any expenditure in excess of the Funds.

5. ACTIVITY AND FINANCIAL REPORTS

5.1 You agree to provide Us Activity Reports in accordance with Item 4 of Schedule 1.

5.2 Within 60 Business Days after:

- (a) the completion of each Financial Year in which a payment of Funding is made to You except the Financial Year in which subparagraph (b) applies; and
- (b) the expiry of the Activity Period, completion of the Activity or the termination or expiry of this MOU;

You agree to provide Us with:

- (c) a report of income and expenditure in the manner agreed to by the Parties; and
- (d) a statement that the Funding was expended on the Activity and in accordance with this MOU. This statement must be provided by Your Chief Financial Officer.

5.3 You agree that the operation of this clause 5 survives the expiration or earlier termination of the Term of the MOU.

6. TAXES, DUTIES AND GOVERNMENT CHARGES

6.1 Subject to this clause, all taxes, duties and government charges imposed or levied in Australia or overseas in connection with this MOU are to be borne by You.

6.2 The provisions of this clause in respect of GST apply if You are registered or are required to be registered for GST.

6.3 We are registered in accordance with the GST Act and agree to notify You of any change in Our GST registration status.

6.4 The Funds paid by Us under this MOU include GST for supplies provided by You to Us in accordance with this MOU and which are Taxable Supplies within the meaning of the GST Act.

6.5 You agree to give Us a tax invoice in accordance with the GST Act in relation to any Taxable Supply by You to Us in connection with this MOU prior to payment of Funds by Us. Without limiting this requirement, a correctly rendered invoice is one that:

- (a) identifies the name of the Activity;
- (b) sets out the name of the Commonwealth Liaison Officer;
- (c) contains a claim for the amount of the Funds properly required; and
- (d) is a tax invoice.

- 6.6 The Funding payable by Us to You under this MOU will not include any amount which represents GST paid by You on Your own inputs and for which an input tax credit is available to You.
- 6.7 If a Party has a claim under or in connection with this MOU for a cost on which that Party must pay GST, the claim is for the cost plus all GST on that cost (except any GST for which that Party is entitled to an input tax credit).
- 6.8 Any refund under subclause 4.5 is to be inclusive of GST and be accompanied by an Adjustment Note under the GST Act relating to Taxable Supplies for which You previously issued to Us a tax invoice.

7. DISCLOSURE OF INFORMATION

- 7.1 The Parties acknowledge that either Party may be required to provide information in relation to the Funding or this MOU, as required by the operation of any law, Commonwealth judicial or parliamentary body or Australian Government agency, for example, the Australian National Audit Office.

8. PROTECTION OF PERSONAL INFORMATION

- 8.1 You agree to handle all personal information related to this program in accordance with the requirements of Commonwealth legislation and the *International Standard for the Protection of Privacy and Personal Information* established under the World Anti-Doping Code.

9. TERMINATION

- 9.1 If:
- (a) You fail to fulfil any of Your undertakings under this MOU, and do not rectify the omission within 10 Business Days of receiving a notice in writing from Us to do so; or
 - (b) the Funding ceases to be available due to a change in government policy;

then We may immediately terminate the Term of this MOU by giving written notice to You of the termination.

- 9.2 Where We terminate the Term of this MOU under subclause 9.1:

- (a) We agree to pay to You any outstanding amount of the Funds to the extent that those monies have been legally committed for expenditure by You in accordance with this MOU and payable by You as a current liability (written evidence of which will be required) by the date notice of termination given under subclause 9.1 is deemed to be received in accordance with subclause 12.2 [Notices]; and

- (b) You agree to repay to Us any part of the Funds which:
 - (i) has not been legally committed for expenditure by You in accordance with this MOU and payable by You as a current liability (written evidence of which will be required) by the date the notice of termination given under subclause 9.1 is deemed to be received in accordance with subclause 12.2 [Notices]; or
 - (ii) has not, in Our opinion, been expended by You in accordance with the terms and conditions of this MOU.

10. DELAY

- 10.1 You agree to take all reasonable steps to minimise delay in completion of the Activity.
- 10.2 If You become aware that You will be delayed by three (3) calendar months or more in progressing or completing the Activity in accordance with this MOU, You agree to immediately notify Us in writing of the cause and nature of the delay. You agree to detail in the notice the steps You will take to contain the delay.
- 10.3 On receipt of a notice of delay under subclause 10.2, We may at Our option:
 - (a) notify You in writing of a period of extension to complete the Activity and vary this MOU accordingly;
 - (b) notify You in writing of reduction in the scope of the Activity and any adjustment to the Funds for You to complete the reduced Activity and vary this MOU accordingly; or
 - (c) terminate this MOU under clause 9 [Termination] or take such other steps as are available under this MOU.
- 10.4 Unless We take action under subclause 10.3, You agree to comply with the time frame for progressing and completing the Activity as set out in this MOU.
- 10.5 If You do not notify Us of any delay in progressing or completing the Activity in accordance with subclause 10.2 We may, at our sole discretion, terminate this MOU.

11. ENTIRE AGREEMENT, VARIATION

- 11.1 This MOU records the entire agreement between You and Us in relation to its subject matter.
- 11.2 Any variation of this MOU will be agreed in writing and signed by You and Us.

12. NOTICES

12.1 The Parties may nominate, from time to time, a person who has authority to receive and sign notices and written communications on their behalf under this MOU and accept any request or direction in relation to the Activity.

12.2 A Party giving notice or notifying under this MOU must do so in writing or by Electronic Communication:

- (a) directed to the recipient's address, as varied by any notice; and
- (b) hand delivered or sent by pre-paid post or Electronic Communication to that address.

The Parties' address details are as specified in item 5 of Schedule 1: Notices.

12.3 A notice given in accordance with subclause 12.1 is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by pre-paid post, 5 Business Days after the date of posting unless it has been received earlier;
- (c) if sent by Electronic Communication, at the time that would be the time of receipt under the *Electronic Transactions Act 1999* (Cth) if a notice was being given under a law of the Commonwealth, which is currently when the Electronic Communication enters the addressee's Information System.

THE REST OF THIS PAGE IS INTENTIONALLY BLANK.

THIS MOU is made on the SEVENTEENTH day of MARCH 2014

EXECUTED BY THE PARTIES AS A MOU

SIGNED for and on behalf of the Department
of Health,

.....

Mr Andrew Godkin
First Assistant Secretary
National Integrity of Sport Unit


.....
sign here

in the presence of:

.....

[Print name of witness]

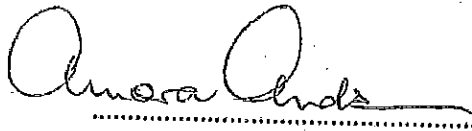


witness sign here

SIGNED for and on behalf of the Australian
Sports Anti-Doping Authority

.....

Ms Aurora Andruska PSM
Chief Executive Officer
Australian Sports Anti-Doping Authority


.....

sign here

in the presence of:

HELEN THORNE
EXECUTIVE OFFICER

[Print name and occupation of witness]


.....

witness sign here

SCHEDULE 1 - PROGRAM AND ACTIVITY

1. PROGRAM OVERVIEW

- 1.1 ASADA has an intelligence gathering and investigations function in place as one of its means in determining whether there is evidence of possible anti-doping rule violations.
- 1.2 ASADA is currently conducting investigations in response to the outcomes of the Australian Crime Commission (ACC) report 'Organised Crime and Drugs in Sport' report. Assistance is now being provided to bring its investigations to a conclusion.
- 1.3 The results from the current investigations are intended to be used to determine whether any anti-doping rule violations as specified under the World Anti-Doping Code (WADA Code) have occurred.
- 1.4 This Schedule deals only with Your use of the Funds provided by Us under this MOU.

2. ACTIVITY

- 2.1 Under this MOU, funding is provided to You to carry out the following activities:
 - a) Engage the Hon Garry Downes to, as soon as practicable, provide a report to the ASADA Chief Executive Officer (CEO), consistent with her functions and duties under the ASADA Act that provides advice on:
 - i) how best to finalise each of the various allegations which form part of the investigations, having regard to the evidence obtained to date, the potential and likelihood of obtaining further evidence, the elements required to be proven to establish the relevant violation, the relevant burden of proof under the WADA Code, and any other relevant matter; and
 - ii) how best to ensure all lawful and appropriate avenues of investigation have been pursued, having regard to the facts and circumstances of the investigations and ASADA's powers and functions.
 - b) The ASADA CEO will make the results of the report available to the Department of Health and the Minister for Sport, subject to any privacy and confidentiality requirements.
- 2.2 The Activity Period is from the Date of this MOU to no later than 30 April 2014.

3. FUNDING AND PAYMENT

- 3.1 Funding will be provided for the 2013-2014 financial year. The total Funding for the Activity is up to a total of \$275,000 (GST inclusive), which represents the amount of Funding provided by Us for the Activity.
- 3.2 We will pay the Funding to you as follows:
 - a) \$192,500 (GST inclusive) on the date of this MOU, and before 30 April 2014; and if required
 - b) Up to a further \$82,500 (GST inclusive) on the date of provision of the report specified in Schedule 1, Clause 2.1.a.

3.3 The payment of Funds in item 3.2 will be made within 20 Business Days if the following condition is satisfied:

- a) where a taxable supply is made, You must provide Us a correct and complete tax invoice, or where no taxable supply is made, You must provide an invoice to Us.

4. REPORTS

Reporting Schedule

4.1 You agree to provide Us an Activity Report on the following date:

- (a) for 2013-14 Financial Year, by 31 August 2014.



Activity Report Requirements

4.2 The Activity Report should contain written confirmation that the Hon Garry Downes was engaged for the Activity and a general summary of the contribution made by him to ASADA's investigations workload.

4.2 You acknowledge that from time to time, We may request information from You about the Activity to assist Us in activities, including but not limited to, the preparation of briefing for Ministers, or briefing for meetings conducted by the World Anti-Doping Agency. You agree to provide reasonable assistance to Us in response to such requests.

5. NOTICES

5.1 Our details are as follows:


Assistant Secretary
National Integrity of Sport Unit
Department of Health
GPO Box 9848
Canberra ACT 2601


5.2 Your details are as follows:

Ms Elen Perdikogiannis
General Manager, Anti-Doping Programs and Legal Services
Australian Sports Anti-Doping Authority
PO Box 1744
FYSHWICK ACT 2609
Ph: (02) 6222 4267
Email: elen.perdikogiannis@asada.gov.au

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Kate Corkery

From: Helen Thorne on behalf of Aurora Andruska
Sent: Friday, January 31, 2014 8:03 PM
To: 'Justice Garry Downes AM [REDACTED]
Cc: Aurora Andruska; Elen Perdikogiannis
Subject: ASADA - Letter of Offer and Terms of Reference [SEC=UNCLASSIFIED]
Attachments: Letter of Offer Justice Downes 31 January 2014.pdf; Terms of Reference Justice Downes 31 January 2014.pdf

Dear Justice Downes

Please refer to the attached Letter of Offer and Terms of Reference from ASADA CEO, Aurora Andruska.

Should you have any questions, please contact Ms Andruska or [REDACTED]

Separately I will send you through details for your travel on Monday 3 February. I look forward to meeting you then. My mobile number, in case you need to reach me over the weekend, is [REDACTED]

Yours sincerely
Helen Thorne

Helen Thorne
Executive Officer to the CEO, Aurora Andruska PSM
Australian Sports Anti-Doping Authority

[REDACTED]
[REDACTED]

P O Box 1744 | Fyshwick ACT 2609 | Australia

ASADA Hotline 13 000 ASADA (13 000 27232)

Information and anti-doping services can also be found at :
ASADA Website <http://www.asada.gov.au>
Check your substances <https://checksubstances.asada.gov.au>
Online whereabouts <https://whereabouts.asada.gov.au>



Australian Government
Australian Sports
Anti-Doping Authority

Unit 6, 5 Tennant Street Fyshwick ACT 2609
PO Box 1744 Fyshwick ACT 2609 T 13 000 ASADA (13 000 27232)
F +61 (0) 2 6222 4201 E asada@asada.gov.au www.asada.gov.au
ABN 91 592 527 503

31 January 2014

Justice Garry Downes AM QC FCI Arb
[REDACTED]

Dear Justice Downes

Advice and report on NRL and AFL investigations

I refer to a proposal that you provide the Australian Sports Anti-Doping Authority ('ASADA') with advice about its investigations into doping in the NRL and AFL.

This letter is to confirm that I wish you to undertake the task outlined in the Terms of Reference at Attachment A to this letter. It would be desirable that you complete the task as soon as is reasonably possible and preferably by the end of April 2014.

I confirm that ASADA is able to offer you an [REDACTED] for the time taken to perform the task.

ASADA will make available the services of a person to assist you with the task, and the Department of Health will make available a lawyer to assist you as required. Arrangements will be made to provide you with office accommodation in Sydney, and for an office in Canberra for those occasions when you need to visit Canberra. [REDACTED]

If you are able to accept this offer, I would be grateful if you would sign the second copy of this letter which is attached, in the space provided for your signature, and return that copy of the letter to me, along with a declaration confirming that you have no conflict of interest in undertaking the task.

Please do not hesitate to contact me if you have any questions about any of the above.

Yours sincerely

I agree the terms set out in this letter

Aurora Andruska PSM
Chief Executive Officer

Justice Garry Downes

Date

TERMS OF REFERENCE

As soon as practicable, provide a report to the ASADA Chief Executive Officer (CEO), consistent with her functions and duties under the ASADA Act, advising her:

- how best to finalise each of the various allegations which form part of the investigations, having regard to the evidence obtained to date, the potential and likelihood of obtaining further evidence, the elements required to be proven to establish the relevant violation, the relevant burden of proof under the WADA Code, and any other relevant matter; and
- how best to ensure all lawful and appropriate avenues of investigation have been pursued, having regard to the facts and circumstances of the investigations and ASADA's powers and functions.

The CEO will make the results of the report available to the Minister for Sport, subject to any privacy and confidentiality requirements.



Australian Government

Australian Sports
Anti-Doping Authority

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31 January 2014

Justice Garry Downes AM QC FCI Arb

[Redacted]

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I refer to a proposal that you provide the Australian Sports Anti-Doping Authority ('ASADA') with advice about its investigations into doping in the NRL and AFL.

This letter is to confirm that I wish you to undertake the task outlined in the Terms of Reference at Attachment A to this letter. It would be desirable that you complete the task as soon as is reasonably possible and preferably by the end of April 2014.

I confirm that ASADA is able to offer you [Redacted] for the time taken to perform the task.

ASADA will make available the services of a person to assist you with the task, and the Department of Health will make available a lawyer to assist you as required. Arrangements will be made to provide you with office accommodation in Sydney and for an office in Canberra for those occasions when you need to visit Canberra. [Redacted]

If you are able to accept this offer, I would be grateful if you would sign the second copy of this letter which is attached, in the space provided for your signature, and return that copy of the letter to me, along with a declaration confirming that you have no conflict of interest in undertaking the task.

Please do not hesitate to contact me if you have any questions about any of the above.

Yours sincerely

Aurora Andruska PSM
Chief Executive Officer

I agree the terms set out in this letter
I declare that I have no
conflict of interest in
undertaking the task

Justice Garry Downes

Date 31/1/2014

TERMS OF REFERENCE

As soon as practicable, provide a report to the ASADA Chief Executive Officer (CEO), consistent with her functions and duties under the ASADA Act, advising her:

- how best to finalise each of the various allegations which form part of the investigations, having regard to the evidence obtained to date, the potential and likelihood of obtaining further evidence, the elements required to be proven to establish the relevant violation, the relevant burden of proof under the WADA Code, and any other relevant matter; and
- how best to ensure all lawful and appropriate avenues of investigation have been pursued, having regard to the facts and circumstances of the investigations and ASADA's powers and functions.

The CEO will make the results of the report available to the Minister for Sport, subject to any privacy and confidentiality requirements.