

LESSONS LEARNED FROM OPERATION COBIA

ASADA's Operation Cobia investigation into the use of peptides in sport and the subsequent litigation that ensued in multiple forums, was a pivotal moment for the agency. Although ASADA had conducted investigations previously, none had been conducted on the scale, complexity and under the level of media scrutiny that Operation Cobia was.

In terms of lessons learned from Operation Cobia, there are four key themes that emerge¹:

1. the need for compulsive powers, which subsequently occurred;
2. the importance of a strong relationship between ASADA and law enforcement, including the Australian Criminal Intelligence Commission (**ACIC**) (formally the Australian Crime Commission (**ACC**));
3. the need for investigations to be conducted effectively and efficiently to avoid arguments of delay not attributable by Athletes at hearings; and
4. clear terms of reference in relation to the investigation, particularly when a joint investigation is conducted.

The need for compulsive powers

In conducting the Operation Cobia investigation, ASADA was initially reliant on the sports' contractual arrangements with players and athlete support personnel that required them to fully co-operate with investigations conducted by the sport. By way of example, with regard to the AFL, clause 12.7 of the then AFL Anti-Doping Code required players, clubs and officers (among others) upon the request of the AFL General Manager – Football Operations or AFL Medical Officer to:

- “(a) fully co-operate with any investigation;*
- “(b) fully and truthfully answer any question asked for the purpose of such investigation; and*
- “(c) provide any document in their possession or control relevant to such investigation.”*

In the Essendon matter, ASADA, with the AFL, began interviews on 15 February 2013. ASADA's investigation was restricted to individuals bound by sports policies. ASADA had no ability to interview key third parties.

On 1 August 2013, ASADA obtained compulsive powers through legislative amendments.² Despite receiving powers on 1 August 2013, there was a delay to produce necessary documentation and policies in order to maintain appropriate governance with respect to the exercise of powers. This

¹ It is noted that both Aurora Andruska, former CEO prepared a 'Lessons Learned' document and that lessons learned from Operation Cobia were also discussed at the ASADA staff conference on 16 – 17 June 2015. Copies of the abovementioned document and the associated notes are **attached**.

² *Australian Sports Anti-Doping Authority Amendment Act 2013 (Cth)* and the *Australian Sports Anti-Doping Authority Amendment Regulation 2013 (No. 1)*.

was a one off unique delay that should not occur again. As a consequence, ASADA now has the power to require information or documents to be provided. Specifically, the CEO is authorised to give a person a written notice, requiring the person to, within the time frame specified in the notice:

1. attend an interview to answer questions;
2. give information of the kind specified in the notice; and/ or
3. produce documents or things of the kind specified in the notice.

ASADA's joint investigation approach was subject to challenge, unsuccessfully, by the Essendon Football Club and James Hird in the Federal Court³ and James Hird on appeal in the Full Court of the Federal Court⁴.

Although ASADA was ultimately successful in both instances, the litigation reinforced ASADA's need for its own compulsive powers. If ASADA was required to conduct a similar investigation today there is a high likelihood that ASADA would commence interviewing key third parties immediately and save significant time coordinating the investigation. The use of powers would also enable ASADA to corroborate intelligence received from law enforcement in a more efficient and timely manner.

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³ *Essendon Football Club v Chief Executive Officer of the Australian Sports Anti-Doping Authority* [2014] FCA 1019.

⁴ *Hird v Chief Executive Officer of the Australian Sports Anti-Doping Authority* [2015] FCAFC 7.

Delay

In *World Anti-Doping Agency v Thomas Bellchambers & Ors* CAS 2015/A/4059, in its chronology relevant to delay, noted that between 15 February 2013 and 20 July 2014, ASADA interviewed 106 individuals as part of its investigation. The Court of Arbitration for Sport stated that it:

“accepts that there has been objectively ... substantial delay, such delay caused (1) by the Players’ unsuccessful attempt in the Federal Court of Australia to quash the infraction notices is attributable to them; and (2) by the Players’ decision to contest the charges as and when, as this Panel has heard, they should have exercised that option; is attributable to them. However, even discounting these periods the precondition for exercise of discretion is satisfied”.

Given ASADA now has compulsive powers⁵ and a stronger relationship with the ACIC, it is anticipated that if ASADA was confronted with an investigation similar in scale to Operation Cobia in the future, it could be completed in a shorter timeframe. ASADA has consulted major Australian sports and made comprehensive submissions to the Wood Review into Australia’s sports integrity arrangements requesting a streamlining of the administrative process in relation to potential ADRVs.

Terms of reference document

Both attached documents refer to the need for ASADA to have a more organised Terms of Reference document at the start of the investigation. Such a document in Cobia (for example, agreed between ASADA, ACC, AFL and NRL) would have in hindsight assisted the conduct and efficiency of the investigation. Such a document should at a minimum outline key responsibilities and be updated as necessary as an investigation continues. The intense media speculation surrounding all aspects of the investigation after the public press conference is a point in time that is too late to develop and agree to such a document. The document ideally needs to be agreed at an early point in time prior to public announcements.

Summary

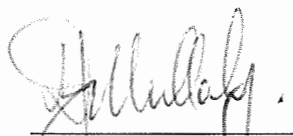
The issues highlighted are not intended to reflect every ‘lesson learned’ by ASADA but provide a high level summary for future consideration. This document also does not examine a lot of the good work that ASADA did in achieving more than 50 ADRVs and sanctions as a result of the investigation.

ASADA’s investigation was subject to a high level of scrutiny that has never before been seen in an Australian anti-doping investigation. This included:

1. multiple Federal Court challenges;
2. multiple anti-doping hearings;
3. Swiss Federal Court review;
4. complaints to the Commonwealth Ombudsman; and
5. complaints to a Senate Committee.

⁵ See clause 3.26B of the *Australian Sports Anti-Doping Authority Regulations 2006* (Cth) and section 13A of the *Australian Sports Anti-Doping Authority Act 2006* (Cth).

At all times the actions of ASADA staff were vindicated, however as outlined if such an investigation were to occur again ASADA could approach its conduct with greater experience in order to achieve a faster outcome.



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