NEW BREED
Exciting small forward Luke Dahlhaus is one of the rising young stars of the competition for the Western Bulldogs.

LEGAL, INTEGRITY & COMPLIANCE

LEGAL, INTEGRITY & COMPLIANCE

A new-look Integrity Department started its first year as a standalone operation, dealing with a range of compliance issues.

The AFL competition's Integrity Department completed its first full year of operation in 2014 following decisions taken by the AFL Commission in 2013.

An integrity unit was first established by the AFL Commission in 2008, primarily to monitor betting on AFL matches to protect the integrity of the AFL competition and to ensure compliance with AFL rules including the Anti-Doping Code.

It was originally part of the football operations department, but given the scope of issues identified by the release of the Australian Crime Commission report in February 2013, the AFL Commission approved the establishment of a standalone integrity department, provided increased resources and included the administration of Total Player Payments and AFL club lists in the responsibilities of the expanded department.

The Australian Crime Commission report focused on new generation performance and image-enhancing drugs (PIEDs) and organised crime involvement in the use of PIEDs in professional sport.

This included the use of peptides and supplements which did not comply with the Anti-Doping Code. →

> An integrity unit was first established by the AFL Commission in 2008

RAISING ISSUES
The Australian Crime Commission report which was released in February 2013. →

CONTROLLED TREATMENTS

A key part of the AFL response to the risks of supplement use was the introduction of an enhanced anti-doping code that included the concept of Controlled Treatments.

Controlled Treatments may be used, but only after the approval of the club doctor and their use must be recorded in a register that is monitored by the AFL.

In 2014, the Integrity Department consulted extensively with the AFL Players' Association, AFL Medical Officers' Association and clubs to produce a defined list of Controlled Treatments and an appropriate process for the recording of those treatments.

Fundamentally, the Controlled Treatments Register is a method for clubs to record their treatment of players and for players to confirm the treatment they receive.

To assist the department, the AFL invested heavily in first-rate technology to ensure the Controlled Treatments Register was secure, efficient and convenient for clubs and players and permitted the department to:

- → Protect the health and welfare of players and the integrity of the AFL competition.
- → Effectively collate and analyse information to identify issues and trends.

Apart from the wide consultation with the AFLPA, the AFLMOA and clubs, the process for the introduction of the Controlled Treatments Register also included:

- → In-season testing of the technology platform via four clubs which used a sample of 4-5 players each over a period of months.
- → Further testing of the platform involving every club and a sample of players over 2-3 weeks.
- → Face-to-face introduction and roll-out of the system for every club during the 2015 pre-season.

The Controlled Treatments Register roll-out has been successful with excellent buy-in from AFL clubs and players.

This is a significant achievement given the magnitude and nature of the technology being introduced and has been accepted by AFL clubs and players as a necessary response to the issues identified in the Australian Crime Commission report and a review of our key learnings from the investigation into the supplements program conducted by the Essendon Football Club in 2011 and 2012.

INCREASED RESOURCES

AFL investigators Gerard Ryan and Tony Keane started employment with the Integrity Department in March and April 2014.

- → Gerard Ryan, APM, was a Detective Superintendent in Victoria Police who oversaw the Purana Taskforce and many complex investigations involving serious and organised crime, terrorism and corruption.
- → Tony Keane was a Detective Senior Constable in the Homicide Squad and prior to that was part of the Driver Taskforce.

The aim of the new roles is to:

- → Be the visible presence of deterrence and enforcement for the AFL industry.
- → Work closely with clubs to strengthen their own internal integrity processes as the first lines of defence on integrity for the industry.
- → Develop close relationships within the AFL and with all stakeholders and be seen as trusted leaders in the area of integrity.
- → Professionalise AFL investigation processes and conduct investigations in line with best practice.
- → Liaise closely and enhance our relationships with law enforcement throughout the country.

MATCH-DAY RESTRICTED AREAS

Before the start of the 2014 season, the department worked closely with clubs to introduce minimum standards for Match-day Restricted Areas to further protect the integrity of the game, particularly in relation to the provision of information which could influence betting on AFL matches.

The key features of the minimum standards include:

- Restricting access to change rooms and coaches boxes before and during each match.
- Only permitted guests having entry to the change rooms if they have been accredited by submitting their names to the AFL.
- Not permitting the use of mobile phones, apart from specified officials, in the restricted areas.

The Match-day Restricted Areas were audited regularly during the season by the AFL investigators which involved 43 inspections in 2014. The list of club guests was also audited weekly.

As an observation, the clubs and players have responded well to the new regime. The approach has been to aim for cultural change in the initial stages rather than take a hard-line enforcement approach.

OFF LIMITS
Access is restricted to change rooms before and during each match. ↑

The Match-day Restricted Areas were audited regularly during the season

COLLECTIVE BARGAINING AGREEMENT MID-TERM REVIEW

During 2014, the AFL and AFLPA completed a mid-term review of the Collective Bargaining Agreement.

As a result, a number of variations were agreed, including:

1. The Total Player Payments Limit for each club will increase by $150,000 for 2015 and 2016, resulting in:
   - Total Player Payments for 2015 being $10,071,000.
   - Total Player Payments for 2016 being $10,369,000.
2. Introduction of a banking mechanism, allowing clubs to spend more than 100 per cent of the TPP and ASA limits if in any of the preceding two years the club spent below 100 per cent of the combined limit.
3. The AFL agreed to contribute an additional $7 million towards the existing AFL Players' Player Retirement Fund.
4. The AFL will provide $1 million to be used for the establishment of a Lifetime Health Care Fund over the next two years to provide health care to players after their careers have finished.
5. The Veterans' Allowance will cease on November 1, 2016.
6. A player who terminates his contract for cause must be delisted by his club, therefore becoming a Delisted Free Agent.
7. Years served on a Rookie List will count as years on a Primary List in the event a player is upgraded to the Primary List.

SOFT CAP RULE

During 2014, work was undertaken on the introduction of a soft cap and luxury tax on non-player football department expenditure by AFL clubs. The AFL Commission resolved that for 2015:

1. The soft cap would be set at $500,000 above the projected industry average spend – given the projected average spend per club was $8.8 million, the soft cap will be $9.3 million.
2. The luxury tax in 2015 will be 37.5 per cent for every dollar spent above the soft cap if a club decides to spend above the cap.

The AFL established a working party to work with club Chief Financial Officers to establish guidelines for the implementation of the soft cap and all clubs were consulted during this process.

The rule adopted for 2015 sets up a framework that allows the AFL to establish the soft cap limit, monitor compliance with the soft cap and enforce payment of the luxury tax should a club decide to spend over the soft cap.

The rule is set up in a form similar to the AFL's Total Player Payment Rules. →

FREE AGENCY

Under the rules agreed between the AFL and the AFLPA in February 2010, a total of nine restricted free agents and 48 unrestricted free agents were eligible under the rules during the 2014 season to consider their future career options →

RESTRICTED FREE AGENTS

- **Adelaide** – David Mackay
- **Carlton** – Bryce Gibbs
- **Collingwood** – Ben Reid
- **Essendon** – Heath Hocking
- **Fremantle** – David Mundy
- **North Melbourne** – Todd Goldstein, Lachlan Hansen
- **West Coast Eagles** – Shannon Hurn
- **Western Bulldogs** – Shaun Higgins

UNRESTRICTED FREE AGENTS

- **Adelaide** – Jason Porplyzia, Ben Rutten
- **Brisbane Lions** – Jonathan Brown, Ashley McGrath
- **Carlton** – Michael Jamison, Kade Simpson, Jarrad Waite
- **Collingwood** – Nick Maxwell, Tyson Goldsack
- **Essendon** – Dustin Fletcher, Leroy Jetta, Jason Winderlich
- **Fremantle** – Garrick Ibbotson, Luke McPharlin, Matthew Pavlich
- **Geelong Cats** – Corey Enright, James Kelly
- **Hawthorn** – Brad Sewell
- **Melbourne** – James Frawley, Lynden Dunn
- **North Melbourne** – Leigh Adams, Michael Firrito, Brent Harvey
- **Port Adelaide** – Dom Cassisi, Kane Cornes, Tom Logan, Paul Stewart
- **Richmond** – Shane Edwards, Jake King, Chris Newman
- **St Kilda** – Sam Fisher, Jarryn Geary, James Gwilt, Lenny Hayes, Clinton Jones
- **Sydney Swans** – Adam Goodes, Nick Malceski, Ryan O'Keefe, Lewis Roberts-Thomson
- **West Coast Eagles** – Sam Butler, Dean Cox, Darren Glass, Matt Rosa
- **Western Bulldogs** – Matthew Boyd, Daniel Giansiracusa, Dale Morris, Robert Murphy, Tom Williams

MOVEMENTS OF PLAYERS

		2014/2015	2013/2014	2012/2013	2011/2012
DELISTED/RETIRED		85	99	75	85
EXCHANGED/ TRADED	TRADES	19	27	28	29
	PLAYERS	24	28	29	28
	SELECTIONS	40	38	41	44
	ON-TRADES	12	7	16	15
PROMOTED ROOKIES		22	23	24	13
NATIONAL DRAFT		76/87	62/74	70/83	75/83
	FIRST DRAFTED	76	62	68	71
PRE-SEASON DRAFT		1/12	1/12	8/15	5/11
ROOKIE DRAFT		64/76	54/69	44/65	79/96
	FIRST DRAFTED	45	39	32	
RETAINED ROOKIES		36	37	50	41

TOTAL PLAYER MOVEMENTS

	2014/2015	2013/2014	2012/2013
FREE AGENCY MOVEMENT			
RESTRICTED	1	4	4
UNRESTRICTED	4	3	6
DELISTED	7	8	4
TOTAL	**12**	**15**	**14**

A total of five players elected to exercise their free agent rights and change clubs for the 2015 season – James Frawley (to Hawthorn), James Gwilt (to Essendon), Shaun Higgins (to North Melbourne), Nick Malceski (to Gold Coast Suns) and Jarrad Waite (to North Melbourne) – elected to exercise their free agent rights and change clubs for the 2015 season.

A further seven delisted players took advantage of the Free Agency Rules allowing them to move to the club of their choice – Mitch Robinson (Carlton to Brisbane), Matthew Dick (Sydney to Carlton), Sam Blease (Melbourne to Geelong), Ben Newton (Port Adelaide to Melbourne), Taylor Hunt (Geelong to Richmond), Tim Membrey (Sydney to St Kilda) and Joel Hamling (Geelong to Western Bulldogs).

EXCHANGE PERIOD

A total of 24 players and 40 draft selections (of which 12 were on-traded) were traded during the AFL Exchange Period. The following players were traded:

- **Kyle Cheney** and **Luke Lowden** (Hawthorn) to Adelaide
- **Dayne Beams** (Collingwood) and **Allen Christensen** (Geelong) to Brisbane Lions
- **Kristian Jaksch** (GWS Giants), **Liam Jones** (Western Bulldogs) and **Mark Whiley** (GWS Giants) to Carlton
- **Jack Crisp** (Brisbane Lions), **Levi Greenwood** (North Melbourne) and **Travis Varcoe** (Geelong) to Collingwood
- **Adam Cooney** (Western Bulldogs) and **Jonathan Giles** (GWS Giants) to Essendon
- **Mitch Clark** (Melbourne) and **Rhys Stanley** (St Kilda) to Geelong;
- **Mitch Hallahan** (Hawthorn) to Gold Coast
- **Ryan Griffen** (Western Bulldogs) and **Joel Patfull** (Brisbane Lions) to GWS Giants
- **Jonathan O'Rourke** (GWS Giants) to Hawthorn
- **Sam Frost** (GWS Giants), **Jeff Garlett** (Carlton) and **Heritier Lumumba** (Collingwood) to Melbourne
- **Patrick Ryder** (Essendon) to Port Adelaide
- **Shane Biggs** (Sydney Swans) and **Tom Boyd** (GWS Giants) to Western Bulldogs.

ROOKIES

In addition to 76 first-time drafted players being selected at the NAB AFL Draft, 24 rookies were promoted by clubs to the Primary List.

As well as 64 players being selected at the Rookie Draft (of which 45 were first-time drafted), 36 rookies were retained on the Rookie List by clubs.

WELCOME RETURN
After overcoming health issues, Mitch Clark will have a fresh start with the Cats. ←

TOTAL PLAYER PAYMENTS

A key objective in 2014 was to begin integrating the Total Player Payments and List Management functions with the AFL's investigations and integrity department to take a more pro-active and intelligence-led approach in this area.

The initial step in 2014 provided for the Total Player Payments and List Management team to work closely with the Integrity Department to identify high-risk contracts and player transfers.

The relevant parties were then requested to attend interviews with the AFL investigators and Ken Wood, the AFL's Manager, Total Player Payments, to record a detailed and current account of the relevant circumstances.

The Total Player Payment limit per club increased 5.4 per cent in 2014, from $164.5 million in 2013 to $173.4 million, while gross player payments increased at a lower rate to the 5.4 per cent increase in Total Player Payments, up by 4 per cent from $181.6 million in 2013 to $188.9 million.

The Additional Services limit per club for the provision of marketing services by players increased by 13 per cent from $852,000 to $963,000 and the amount spent on these services by clubs increased by 17 per cent, from $13.9 million in 2013 to $16.25 million.

In addition to these amounts, players earned $1.7 million from employment and marketing arrangements with associates of clubs.

Taking into account the $188.9 million in gross player payments, $16.25 million in additional services agreements and $1.7 million from employment and marketing arrangements with associates of the clubs, the total earned by players in 2014 was $206.85 million, an increase of 4.7 per cent on the 2013 total of $197.5 million.

The average payment by clubs for a listed player in 2014 was $283,029, an increase of 6.7 per cent over 2013.

> The average payment by clubs for a listed player in 2014 was $283,029, an increase of 6.7 per cent over 2013

PLAYER PAYMENTS
The TPP limit per club increased to $173.4 million in 2014. →

Three clubs were sanctioned during 2014 for breaching the AFL Player List rules:

- Port Adelaide Football Club was sanctioned $5000 for breaching the List Lodgement Rules by failing to lodge forms relating to list changes. Port Adelaide fully co-operated in the matter and this and other mitigating factors, including that the breach was advised to the AFL as soon as the club became aware of it, it was an administrative error and not intentional and the club's good record were taken into account regarding the sanction.
- Geelong Cats Football Club was sanctioned $5000 for breaching the List Lodgement Rules by failing to lodge forms relating to list changes. Geelong fully co-operated in the matter and this and other mitigating factors, including that the breach was an administrative error and not intentional and the club's good record were taken into account regarding the sanction.
- Essendon Football Club was sanctioned $10,000 for breaching the List Lodgement Rules in relation to unlisted players training at the club before the NAB AFL Rookie Draft in November 2013. The club, through a procedural documentation issue, had failed to lodge the list of Unlisted Players training at the club, before the start of their training activities. The club fully co-operated in the investigation and this and other mitigating factors were taken into account regarding the sanction imposed on the club.
- Essendon Football Club was also sanctioned $20,000 for breaching the List Lodgement Rules in relation to medical testing of potential draftees. The possible breach was identified by the club during an internal audit of football department policies and procedures and was reported to the AFL for clarification and adjudication. The club fully co-operated in the investigation and this and other mitigating factors were taken into account regarding the sanction imposed on the club.

2004–2014 SUMMARY OF AFL PLAYER EARNINGS

EARNINGS	2004 Played	2005 Played	2006 Played	2007 Played	2008 Played	2009 Played	2010 Played	2011 Played	2011 Listed	2012 Played	2012 Listed	2013 Played	2013 Listed	2014 Played	2014 Listed
$0 – $60,000	35	47	34	24	10	9	9	9	31	1	21	0	9	0	2
$60,001 – $100,000	111	119	99	92	90	80	67	75	114	71	120	48	109	33	90
$100,001 – $200,000	188	183	198	177	168	156	153	180	186	187	199	203	213	177	198
$200,001 – $300,000	107	101	109	134	142	151	158	162	166	166	170	148	156	136	147
$300,001 – $400,000	57	47	57	60	77	85	91	92	94	103	104	114	115	125	128
$400,001 – $500,000	24	21	30	35	39	37	45	53	53	58	60	64	64	75	76
$500,001 – $600,000	12	18	10	13	18	16	9	17	20	25	25	22	22	31	32
$600,001 – $700,000	4	7	7	5	3	6	8	10	10	11	12	19	19	26	26
$700,001 – $800,000	-	1	0	3	5	3	2	3	3	4	4	10	10	10	10
$800,001 – $900,000	4	3	4	2	-	2	2	4	4	1	1	7	7	6	6
$900,001 – $1,000,000	-	-	1	-	-	2	4	1	1	1	1	0	0	2	2
$1,000,001 +	-	-	-	1	2	-	-	2	2	8	8	5	5	2	2
TOTAL	**542**	**547**	**549**	**546**	**554**	**547**	**548**	**608**	**684**	**636**	**725**	**640**	**729**	**623**	**719**

2004–2014 AFL TOTAL PLAYER EARNINGS

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	Movement % 2013-2014
GROSS PLAYER PAYMENTS ("GPP")	$ 108,645,462	$ 110,960,485	$ 114,215,259	$ 121,340,818	$ 128,847,606	$ 134,146,837	$ 136,698,418	$ 153,699,344	$ 173,717,042	$ 181,560,623	$ 188,944,174	4.07%
Deductions:												
Finals/Relocation and Living and other allowances	1,660,839	2,096,184	1,816,889	2,242,291	2,137,838	1,891,522	2,130,159	2,060,463	2,044,477	2,274,355	2,060,850	-9.39%
Retention and Cost of Living Allowances	1,406,450	1,291,500	1,175,574	680,488	728,263	753,988	779,100	804,825	1,722,326	1,791,219	1,847,944	3.17%
Veterans' Allowance	4,870,772	5,326,653	5,014,770	5,137,978	4,843,849	4,814,190	4,614,162	5,361,045	6,239,064	7,886,536	6,560,023	-16.82%
Other deductions	1,098,720	338,705	941,007	2,082,388	2,379,364	2,561,369	2,296,275	3,921,152	4,663,352	4,303,195	5,232,375	21.59%
TOTAL DEDUCTIONS	9,036,781	9,053,042	8,948,240	10,143,145	10,089,314	10,021,069	9,819,696	12,147,485	14,669,219	16,255,304	15,701,193	-3.41%
Gross player payments less deductions	99,608,681	101,907,443	105,267,019	111,197,673	118,758,292	124,125,768	126,878,722	141,686,376	159,047,825	165,305,319	173,242,981	4.80%
Injury Allowance	4,314,200	4,332,000	4,836,000	4,936,629	5,684,600	6,403,200	5,572,800	3,107,594	2,551,693	2,060,007	1,597,906	-22.43%
Gross player payments less deductions & injury allowance	95,294,481	97,575,443	100,431,019	106,261,044	113,073,692	117,722,568	121,305,922	138,578,782	156,496,132	163,245,312	171,645,075	5.15%
TPP LIMIT	**97,840,000**	**100,800,000**	**103,564,992**	**111,100,000**	**118,900,000**	**123,100,000**	**127,200,000**	**139,612,500**	**158,172,750**	**164,499,660**	**173,382,660**	**5.40%**
Gross Player Payments less Deductions and Injury Allowance	95,294,481	97,575,443	100,431,019	106,261,044	113,073,692	117,722,568	121,305,922	138,578,782	156,496,132	163,245,312	171,640,320	5.14%
Margin/(Excess)	2,545,519	3,224,557	3,133,973	4,838,956	5,826,308	5,377,432	5,894,078	1,033,718	1,676,618	1,254,348	1,742,340	38.90%
Additional Services Agreements (ASA's)	5,840,950	6,071,450	6,579,394	6,725,773	7,440,463	7,692,843	8,128,960	9,191,723	10,398,625	13,874,676	16,237,924	17.03%
Average Gross Player Earnings (including ASA's)**	Listed $184,656	Listed $187,251	Listed $192,962	Listed $203,280	Listed $213,953	Listed $221,482	Listed $226,165	Listed $237,388	Listed $251,559	Listed $265,179	Listed $283,029	6.73%
	Played $200,971	Played $204,271	Played $208,104	Played $218,560	Played $233,281	Played $241,436	Played $249,239	Played $253,795	Played $272,074	Played $288,212	Played $306,841	6.46%

**** Average Gross Player Earnings ("AGPE")**
The AGPE is a result of the payments (GPP plus ASA's) made to Primary Listed and Pre-Season Nominated Rookies only (grouped as "Primary Listed").
Played figure is the AGPE for those Primary Listed players who played games divided by number of Primary Listed players who played.
Listed figure is the AGPE divided by the number of Primary Listed players.

ASADA INVESTIGATION

In February 2013, the Essendon Football Club asked the Australian Sports Anti-Doping Authority (ASADA) and the AFL to investigate supplements administered to its players during late 2011 and 2012.

Details concerning the investigation and a subsequent interim report delivered by ASADA to the AFL Commission in August 2013 were published in the AFL's 2013 Annual Report which is available at *AFL.com.au*.

Based on the findings of the interim report, the AFL's General Counsel and General Manager, Legal, Integrity and Compliance, Andrew Dillon, charged the Essendon Football Club and several of its employees, including senior coach James Hird, assistant coach Mark Thompson, football manager Danny Corcoran and club doctor Dr Bruce Reid, with conduct unbecoming or likely to prejudice the interests of the AFL or to bring the game into disrepute.

On August 27, 2013, the AFL Commission announced sanctions against Essendon FC, which included a fine of $2 million imposed on the club and the club being excluded from the 2013 finals series. This was the first time a club had been excluded from the finals after qualifying for the finals.

The details of the sanctions against the club and its employees were also published in the AFL's 2013 Annual Report.

Among other things, Essendon FC agreed with the AFL that it had engaged in practices that exposed players to potential risks to their health and safety, as well as the potential risk of using substances that were prohibited by the AFL Anti-Doping Code and the World Anti-Doping Code.

The investigation by ASADA into the supplements program at Essendon FC continued after August 2013, including 2014.

SHOW CAUSE NOTICES

On June 13, 2014, ASADA announced it had put formal allegations of possible anti-doping rule violations to 34 current and former players of Essendon FC.

ASADA Chief Executive Officer Ben McDevitt indicated his decision to issue show cause notices was based on a considerable body of evidence collected during the 16-month investigation.

On the same day, Essendon FC announced it would take legal action in the Federal Court against ASADA, alleging that ASADA's joint investigation with the AFL was unlawful and in breach of the ASADA Act.

The club's senior coach James Hird took similar legal action against ASADA.

Essendon and Mr Hird sought an urgent hearing and ASADA subsequently agreed to take no further action until the Federal Court had considered the applications by Essendon and Mr Hird.

FEDERAL COURT HEARING

Justice Middleton of the Federal Court sitting in Melbourne heard the applications by Essendon and Mr Hird against ASADA from August 11-13, 2014.

The 34 current and former players and the AFL were not parties to the action.

On September 19, 2014, Justice Middleton announced he had found the investigation by ASADA was lawful and he dismissed the applications by Essendon and Mr Hird.

Essendon FC subsequently decided not to appeal the decision of Justice Middleton but Mr Hird decided to appeal the decision to the full Federal Court.

On January 30, 2015, the Federal Court announced that the appeal by Mr Hird had been rejected.

When announcing the decision, Justice Susan Kenny said ASADA acted lawfully in conducting its joint investigation with the AFL into the Bombers' 2012 supplement program.

Three Federal Court judges heard the appeal by Mr Hird and the decision to reject the appeal was unanimous.

Extracts from the reasons of the Honourable Justice John Middleton – as published by the Federal Court. →

EXTRACTS FROM THE REASONS OF THE HONOURABLE JUSTICE JOHN MIDDLETON

1. In early February 2013, the Chief Executive Officer ('CEO') of the Australian Sports Anti-Doping Authority ('ASADA') and the Australian Football League ('the AFL') agreed to conduct what was referred to by them as a "joint investigation" into the Essendon Football Club ('Essendon') players and personnel involved in a supplements program implemented by Essendon in 2011 and 2012. The investigation may be referred to as a "joint investigation", but whatever label is given to the investigation is of little relevance. The important enquiry is to consider the nature, purpose and conduct of the investigation itself.

2. In these proceedings (which were heard together), Essendon and Mr James Hird essentially allege that the CEO and ASADA had no power to conduct the joint investigation in the way it was conducted (involving the use by ASADA of AFL "compulsory powers" and unauthorised disclosure of information), that the joint investigation was undertaken for improper purposes, and that ASADA breached its confidentiality obligations during the course of the investigation and in the provision to the AFL of an interim report.

3. ASADA has very important national and international functions to perform. The fight against doping requires constant vigilance, upgrading of investigatory techniques, and well-resourced and co-ordinated authorised bodies to educate, monitor, investigate and prosecute in appropriate situations. The adoption of innovative processes and methods of investigation is to be strongly supported. ASADA and a "sporting administration" or "sporting administration body" (such as the AFL) may need to act jointly and co-operate with each other for the purposes of implementing their own responsibilities. However, all statutory authorities (including ASADA) must comply with the rule of law and proceed only in a manner (expressly or impliedly) authorised by law. The essential question in these proceedings is whether ASADA has so complied with the rule of law in conducting, in the manner and for the purposes it did, the investigation.

4. The AFL is also not a party to these proceedings. No relief is sought against the AFL. No Commissioner of the AFL, nor any agent or employee of the AFL has given evidence. No contention has been made that the contractual "compulsory powers" relied upon by the AFL were unenforceable at common law or because of any legislative provision. For instance, it has not been suggested or pleaded by any party that the "compulsory powers" in the contractual arrangements between the AFL, Mr Hird and the 34 Players are unenforceable on the basis they are contrary to public policy or that they are unconscionable. In fact, the parties, ASADA, the AFL and the 34 Players all regarded the "compulsory powers" of the AFL as being valid and enforceable, and each acted accordingly.

5. The 34 Players are not parties to these proceedings. No party sought to join any of the 34 Players.

6. The 34 Players have a significant interest in these proceedings and the relief sought, particularly in setting aside the Notices which directly impact upon them.

7. I should briefly refer to the witnesses. Mr Hird relied upon his own affidavits and was cross-examined. Essendon relied upon an affidavit filed by Mr Xavier Campbell (the current CEO of Essendon), who was cross-examined. The CEO relied upon the affidavits of Ms Aurora Andruska (the former CEO of ASADA), and Messrs Trevor Burgess (National Manager – Operations at ASADA) and Aaron Walker (an investigator at ASADA), who were cross-examined and an affidavit of Christopher McDermott (a lawyer on behalf of ASADA), who was not cross-examined.

8. The only witness whose credit was impugned was Ms Andruska. It was submitted by Essendon and Mr Hird that Ms Andruska was non-responsive, evasive and partisan. It was observed, as was the fact, that there were long pauses between the questioning of Ms Andruska and her responses.

9. I do not consider these criticisms, to the extent they impact on her veracity, can be sustained. Ms Andruska was a truthful witness. Ms Andruska was careful in all her responses, and in my view wanted to consider properly each question, seeking to provide a truthful answer. Ms Andruska provided convincing and credible explanations for the steps she or her investigators took in undertaking the co-operative arrangement between ASADA and the AFL for the purposes she outlined in her affidavit evidence. Ms Andruska was a very experienced public servant, and explained during the course of detailed cross-examination the approach undertaken by herself and investigators of ASADA and the AFL. The cross-examination traversed many areas of detail relating to various meetings and decisions made in the course of the investigation. I would have expected Ms Andruska to be careful in responding to the interrogation made of her on these matters, as indeed she was.

10. In some instances, Ms Andruska did take the opportunity to explain her position as to the propriety and purpose of ASADA's conduct in the investigation, and her characterisation of the events which occurred. Having regard to the issues in these proceedings, and the challenge to the lawfulness of her own actions as CEO of ASADA, this was to be expected. In many instances, her evidence gave context to her file notes that were in evidence before the Court. Where necessary Ms Andruska took time to refer to her notes, which again was only to be expected. It was apparent from her evidence that she relied upon her staff, including legally qualified staff, and her investigators, in effectively guiding and conducting the investigation. As CEO, Ms Andruska was entitled to delegate certain administrative tasks to her staff, within the limits provided for by the Act, and the NAD Scheme. Obviously, during the course of the investigation, many decisions were properly left to the investigators within ASADA.

11. It is important to recall that these proceedings do not involve a broad and general inquiry (outside the pleaded case) as to the general conduct of the investigation, nor the day to day activities of Ms Andruska or her investigators during the course of the investigation. I have come to the view that Ms Andruska was under some pressure from the then Federal Government and the AFL to bring the investigation to an end as soon as possible, and to assist the AFL so that the AFL could take disciplinary proceedings against Mr Hird and Essendon prior to the 2013 AFL finals season. However, I do not regard such pressure as giving rise to any dereliction by Ms Andruska in respect of her responsibilities, under the Act or the NAD Scheme.

12. For the purposes of these proceedings, I do not need to consider or comment on the propriety of the intervention made by the then Federal Government during the course of the investigation. Section 24 of the Act provides that the relevant minister may, by legislative instrument, give directions to the CEO in relation to the performance of his or her functions and the exercise of his or her powers. However, such a direction must not relate to a particular athlete, or a particular support person, who is subject to the NAD scheme, or relate to the testing of a particular athlete under an anti-doping testing service, or safety checking service, being provided by the CEO under contract on behalf of the Commonwealth.

13. ASADA is to be independent from the influence of government, save for the power of the relevant Minister to give directions, by legislative instrument, as contemplated by s 24 of the Act. The Act does not empower the Minister to override the exercise of the CEO's statutory powers in relation to a specific athlete, and requires any direction to be made by legislative instrument. Ministerial direction outside the specific permission given by the Act would normally be treated as impliedly forbidden.

14. The determination of these proceedings primarily depends upon the correct characterisation of the events which occurred, and the purpose and nature of the investigation by ASADA with the co-operation of the AFL.

15. Based upon the evidence as presented to the Court and from the admissions made by the parties, I conclude as follows:
    a. By 1 February 2013, both ASADA and the AFL had agreed (in general terms) to investigate Essendon.
    b. By 1 February 2013, ASADA agreed (in general terms) with the AFL, that as ASADA lacked compulsory powers, ASADA would gain the benefit of the AFL's compulsory powers in conducting its investigation.
    c. ASADA would have commenced an investigation into Essendon, its players and personnel without the invitation of Essendon or Mr Hird, and without their public display of support and co-operation.
    d. In light of ASADA's statutory responsibilities, upon becoming aware of possible anti-doping violations, ASADA would have investigated Essendon, its players and personnel (and probably other clubs) with or without the co-operation of the AFL.
    e. ASADA would have decided to investigate Essendon, its players and personnel (and probably other clubs) without recourse to the AFL's contractual powers to compel Mr Hird and the 34 Players to answer questions and provide information as requested by the AFL.
    f. Although Mr Hird publicly supported the "joint investigation", privately he did not, but was motivated to co-operate with ASADA and the AFL in the best interests of Essendon and its players.
    g. Nevertheless, Essendon, Mr Hird and the 34 Players all co-operated because of their contractual obligations to do so, which required them to attend interviews, answer questions and provide information to the AFL, and to co-operate with ASADA.
    h. Mr Hird and the 34 Players, under their contractual obligations were required to answer questions of, and provide information to, the AFL subject to a limited right to claim the privilege against self-incrimination.
    i. Mr Hird and the 34 Players were legally represented at all relevant times, co-operated with the investigation, did not claim to exercise the privilege against self-incrimination, and provided information:
        i. In respect of the interviews directly to the AFL and ASADA; and
        ii. In respect of other information provided at the request of the AFL, directly to the AFL which was then passed on to ASADA.
    j. The information provided at the interviews by Mr Hird and the 34 Players was simultaneously divulged and communicated to the personnel of both the AFL and ASADA, who were present in the interview room.
    k. The investigation involved the AFL working co-operatively with ASADA, as the AFL was obliged to do under the NAD Scheme.
    l. The investigation involved the co-operation of ASADA and the AFL in terms of strategy, the sharing of financial and personnel resources, and in the conduct of interviews. Their co-operation was evident in the day to day conduct of the investigation as it progressed.
    m. The investigation required co-ordination between ASADA and the AFL as to the conduct of the investigation, including the arrangement of interviews, the collection of physical evidence, and the preparation of documents. These were matters of procedure and machinery, upon which various investigators (either within ASADA or the AFL) took responsibility in the course of the investigation. The fact that either ASADA or the AFL personnel took responsibility for one or other of these matters does not impact upon the conclusion that the investigation was undertaken by ASADA with the co-operation of the AFL.
    n. ASADA benefited from the co-operation of the AFL in two main ways:
        i. First, it benefited from the AFL's use of its compulsory powers (whether formally or not) to require production of physical evidence, documents, computers and phones, which were provided to ASADA;
        ii. Secondly, it benefited from the AFL's use of its compulsory powers to arrange for Mr Hird and the 34 Players to attend interviews and answer questions truthfully.
    o. ASADA and the AFL had different but related, purposes:
        i. ASADA's purpose was to investigate allegations of anti-doping violations;
        ii. The AFL, concerned with anti-doping violations, was interested in the governance of its clubs, such as Essendon, so as to ensure the AFL anti-doping policy was being properly implemented at the club level.
    p. The investigation undertaken by ASADA in co-operation with the AFL in fact resulted in both ASADA and the AFL each making two separate and distinct decisions within their own areas of responsibility;
        i. In the case of the CEO of ASADA, to issue the Notices; and
        ii. In the case of the AFL, to bring disciplinary charges against Essendon and Mr Hird.
    q. The Interim Report given to the AFL was prepared for, and divulged or communicated to, the AFL for the purposes of ASADA's continuing investigation, as set out in the covering letter dated 2 August 2013, but also in the knowledge that it would also be used by the AFL for the purpose of the AFL considering whether to bring disciplinary action against Essendon and Mr Hird.

16. These proceedings are brought under s 39B of the Judiciary Act 1903 (Cth), involving the judicial review of administrative action.

17. Judicial review can be described broadly as the function of courts to provide remedies to people adversely affected by unlawful government action. Importantly, the purpose of judicial review is to ensure the legality of government action, rather than its correctness: see Attorney-General (NSW) v Quin (1990) 170 CLR 1 at 35-36.

18. No statutory power is required enabling a statutory authority merely to request that a person provide information voluntarily. ASADA had the power to request Essendon, Mr Hird and the 34 Players to provide information and answer questions voluntarily as part of its investigation: see Clough v Leahy (1904) 2 CLR 139 at 155-157 per Griffith CJ (Barton and O'Connor JJ concurring).

19. However, express or implied statutory power is required to compel the provision of information, or the answering of questions: see, eg, McGuinness v Attorney-General (Vic) (1940) 63 CLR 73 at 101-102, Day v Commissioner, Australian Federal Police (2000) 101 FCR 66; [2000] FCA 1272 at [11] and Williams v Commonwealth (2012) 248 CLR 156; [2012] HCA 23 at [63].

20. The executive government can procure the enactment of laws requiring the attendance of persons before those persons it designates to conduct an inquiry and requiring them to produce documents and to answer questions. If the requirements to attend, give evidence and produce documents are disobeyed, a sanction can be imposed. It is this element of power which distinguishes the governmental investigation from investigations by other entities. The element of power comes from the ability to compel the giving of evidence, with the imposition of a sanction.

21. The foremost response to the contention of Mr Hird and Essendon that Parliament did not authorise "a joint investigation" is that as a general proposition, this is too wide. Whether any investigation is lawful or not will depend upon the characterisation of its purpose, and the conduct and nature of that investigation. The investigation of ASADA, the subject of these proceedings, I have found was for the purpose of investigating anti-doping violations. In addition, as I will indicate, the nature and conduct of the investigation was lawful.

22. In respect of the nature and conduct of the "joint investigation", Essendon and Mr Hird contend that it involved unlawful disclosure of information by ASADA.

23. Once it is appreciated that the AFL received the information directly from Mr Hird and the 34 Players in the course of the interviews, and not by being given the information by ASADA, then none of the protective provisions referred to by Essendon or Mr Hird applied in their terms to prevent the AFL receiving the information. In other words, in this particular investigation, Mr Hird and the 34 Players voluntarily and directly gave to the AFL the answers to questions and the information without complaint. Based upon my finding that the information provided at the interviews by Mr Hird and the 34 Players was simultaneously divulged and communicated to personnel of the AFL and ASADA, there was no disclosure of any information by ASADA to the AFL in the interviews.

24. In any event, by actually being in the interview room, knowing that AFL personnel were present, being aware that the Player Rules were applicable to the interview process, and by responding to each and every question, it can hardly be said that Mr Hird and the Essendon players and personnel did not knowingly consent to any information being disclosed then and there to all in the interview room.

25. Mr Hird and Essendon submit that ASADA's decision to proceed to investigate Essendon in the way that it did was driven by ASADA's desire to harness the AFL's compulsory powers in aid of the investigation.

26. In relation to this submission, I make the following response.

27. The "desire" to use or "harness" the AFL's compulsory powers can immediately be accepted as one consideration that was relevant to ASADA's interest in seeking the co-operation of the AFL. It was not ASADA's purpose for conducting of the investigation.

28. ASADA's purpose was as I have already described; that is, to investigate possible anti-doping violations. The "harnessing" of the "compulsory powers" of the AFL needs to be put in context. ASADA was not using any power of coercion or compulsion or any power of sanction under the Act or NAD Scheme. Mr Hird and the 34 Players could refuse to produce documents to, and to answer questions put to them by, ASADA or the AFL, but in doing so would breach their contractual obligations with Essendon and the AFL. Whether or not the 34 Players (or even Mr Hird) felt they had no choice to answer questions in front of ASADA and the AFL is not to the point. The legal consequences of Mr Hird and the 34 Players voluntarily entering into the contractual regime with Essendon and the AFL, and subjecting themselves to the Player Rules and AFL Code, included undertaking certain obligations and relinquishing certain rights. One such right was the right to claim the privilege against self-incrimination before the AFL subject to the carve out in r 1.9 of the Player Rules. Similarly, obligations were imposed on Mr Hird and the 34 Players to co-operate with the AFL and ASADA in investigations. There is no suggestion in these proceedings that Mr Hird or any of the 34 Players did not understand the nature of the contractual obligations undertaken, or the rights they were giving up, in return for the right or privilege to play or coach AFL football for Essendon in the AFL competition.

29. The use of the compulsory powers by the AFL (and not by ASADA) did not thwart or frustrate the purpose of the Act or the NAD Scheme. ASADA did not use any compulsory power of its own, and Mr Hird and the 34 Players did not answer questions or provide any information arising from any requirement to do so under or pursuant to the Act or NAD Scheme. No power of the State has been utilised by ASADA to compel Mr Hird or the 34 Players to act in the way they did during the investigation.

30. I now turn to the contentions relating to the Interim Report.

31. In my view, the Interim Report was given to the AFL for both "the purposes of" the continuing ASADA investigation, and "in connection with" the ASADA investigation.

32. As to being used for "the purposes of" the investigation, as I have already mentioned the ASADA letter of 2 August 2013 made it clear that ASADA was requesting information from the AFL for ASADA's continuing work on its investigation.

33. As to the question of whether the Interim Report was given "in connection with" the ASADA investigation, the following can be concluded.

34. On the evidence before the Court, the investigation disclosed a strong link between deficient governance and management practices at Essendon and the possibility of Essendon players being involved in anti-doping violations. This can be seen from the Statement of Grounds brought by the AFL against Essendon and Mr Hird, and by reference to the Deeds entered into by Essendon and Mr Hird in the settlement of the disciplinary charges brought against them by the AFL.

35. The Interim Report itself identified a connection between deficient governance and management practices on the part of Essendon personnel and the possibility of players being involved in anti-doping violations.

36. Therefore, the poor governance and management practices at Essendon were related to possible anti-doping violations by Essendon players, to the extent that such violations may have been systemic, or may have occurred because proper governance and management practices were not in place. This seems to have been the very situation that existed at Essendon. The disclosure of investigative information to enable the AFL to consider and, if thought appropriate, take disciplinary action against Essendon and its officials in this way was connected with the ASADA investigation.

37. For the reasons I will publish, I will order the dismissal of the applications brought by Essendon and Mr Hird.

38. However, if I had found the investigation to be unlawful or the provision of the Interim Report to be unauthorised or done for an improper purpose, issues would have arisen as to the exercise of the Court's discretion in granting relief.

39. The courts have a responsibility to vindicate rights and ensure that public bodies act within the law. I do not consider that the discretion to refuse relief should be described as exceptional or rare in circumstances where a public body has acted unlawfully. However, there is a basic presumption that appropriate relief should follow upon a finding of unlawfulness.

40. In these proceedings, I would not have declined to set aside the Notices or grant injunctive orders on the basis of public policy, delay, acquiescence or the conduct of either Essendon or Mr Hird.

41. The only grounds in my view which would have precluded relief are the grounds of inevitable outcome and utility.

42. The AFL could itself have separately and lawfully (pursuant to the contractual regime) compelled the 34 Players and Mr Hird to provide the very information in fact provided by them in the course of the investigation.

43. ASADA could then have requested the provision of information from the AFL, or the AFL could have volunteered the information. The privileges against self-incrimination would not have been claimed in relation to the AFL due to the contractual obligations of Mr Hird and the 34 Players. In such a scenario, there would have been no question of unauthorised information being divulged or communicated by ASADA, as the AFL would have divulged or communicated the information to ASADA.

44. As to the future, no useful purpose would be served by setting aside the Notices or the grant of injunctive relief sought by Mr Hird and Essendon, because the process set out above could then be undertaken by the AFL and ASADA. I am not suggesting that this could be done by the simple expedient of obtaining the transcripts of the interviews in the possession and control of the AFL. This may not be permissible if the information contained in such transcripts was obtained unlawfully by ASADA.

45. However, the Court would not frame an order which prevents ASADA from being able to carry out its statutory functions in accordance with the law, even if that involves the derivative use of information sourced from the unlawfully conducted interviews. Nor does the power of the Court extend to removing from the memory of ASADA the material it has gathered in the joint investigation, some of which was lawfully obtained in any event.

46. If ASADA had made an unlawful decision, itself a nullity as contended for by Mr Hird and Essendon, this would not prevent a decision-maker making another lawful decision: see Minister for Immigration and Multicultural Affairs v Bhardwaj (2002) 209 CLR 597.

47. The CEO or ASADA could in the future lawfully obtain effectively the same information by further interviews conducted independently by the AFL, which information would be given to ASADA. Mr Hird and the 34 Players can hardly be heard to contend before this Court in these proceedings that they would break their current contracts with Essendon and the AFL, and fail to provide requested information to the AFL.

48. The CEO would then need to consciously re-consider whether to issue new notices based upon that information and any additional material before him.

49. I make a final observation relating to the declaration sought concerning the Interim Report. If I had come to the view that the provision of the Interim Report to the AFL was unlawful, I would have been disinclined to make the declaration sought.

50. The Interim Report was provided to the AFL on 2 August 2013, with the knowledge of Mr Hird, Essendon and the 34 Players. No proceedings were brought to challenge the provision of the Interim Report to the AFL until the commencement of these proceedings.

51. More significantly, the AFL (not a party to these proceedings) has acted upon that Interim Report, bringing disciplinary charges against Essendon and Mr Hird. Both Essendon and Mr Hird entered into settlements with the AFL in relation to those disciplinary charges.

52. By way of conclusion, in my view, ASADA complied with the rule of law in establishing and conducting, in the manner and for the purposes it did, the investigation.

53. In addition, ASADA lawfully provided the Interim Report to the AFL, which has subsequently been acted upon by the AFL in bringing disciplinary charges against Essendon and Mr Hird.

54. On the basis of the reasons I now publish, the applications of Mr Hird and Essendon are dismissed.

55. In each application the Court orders the following:
    a. The application is dismissed.
    b. Unless a party notifies in writing the Court by 4:00pm on Wednesday 1 October 2014, indicating opposition to this order as to costs, the Applicant pay the Respondent's costs of and in connection with the proceeding to be taxed in default of agreement.

CONVENOR
AFL General Counsel Andrew Dillon established the AFL Anti-Doping Tribunal. →

AMENDED SHOW CAUSE NOTICES

On October 17, 2014, ASADA announced it had issued amended show cause notices to 34 current and former Essendon players for the use of a prohibited substance, Thymosin Beta 4, during the 2012 season.

The resumption of action against the players followed the Federal Court's dismissal of the applications by Essendon FC and Mr Hird on September 19.

ASADA indicated that each amended notice was individually tailored and included about 350 pages of evidence in support of ASADA's case against each player.

On October 23, 2014, the AFL Players' Association, acting on behalf of the 34 players, announced the players did not intend to respond to the show cause notices.

ASADA'S ANTI-DOPING RULE VIOLATION PANEL

On November 13, 2014, the AFL announced it had received notification from ASADA that the names of current and former Essendon players had been placed on the Register of Findings by ASADA's Anti-Doping Rule Violation Panel.

After that advice, AFL General Counsel Andrew Dillon considered whether or not to issue infraction notices to the players concerned and to convene hearings of the AFL Anti-Doping Tribunal.

Based on the information contained in the amended show cause notices from October 17 and the notification from ASADA on November 13, infraction notices were issued by Mr Dillon on November 14, 2014, to current and former Essendon players and a former employee of the club.

AFL ANTI-DOPING TRIBUNAL

In his capacity as General Counsel, Mr Dillon established the AFL Anti-Doping Tribunal with the following members to consider the infraction notices:

- → David Jones, Chair
- → John Nixon
- → Wayne Henwood

Mr Jones chairs the AFL Tribunal and is a retired County Court judge, as is Mr Nixon.

Mr Henwood is a barrister practising in Victoria and is a former player with the Sydney Swans and Melbourne Football Clubs. He is also a member of the AFL Tribunal.

The AFL also engaged barrister Justin Hooper to act as Counsel assisting the Anti-Doping Tribunal.

Mr Hooper's role includes being instructed directly by the Tribunal panel as required and receiving submissions and liaising with the parties involved in the hearing.

After a directions hearing involving legal representatives for ASADA and the players and a former employee, Mr Jones announced the Anti-Doping Tribunal hearing would be held in private.

The AFL had proposed the hearing be public, which was opposed by representatives of ASADA and the players.

Essendon FC applied to be represented during the Anti-Doping Tribunal hearing, but given the hearing was to be private, the Tribunal did not approve Essendon's application.

The Anti-Doping Tribunal hearing opened on December 15, 2014, at the County Court in Melbourne and continued on December 18 and 19.

It resumed on January 12, 2015.

After a directions hearing involving legal representatives for ASADA and the players and a former employee, Mr Jones announced the Anti-Doping Tribunal hearing would be held in private