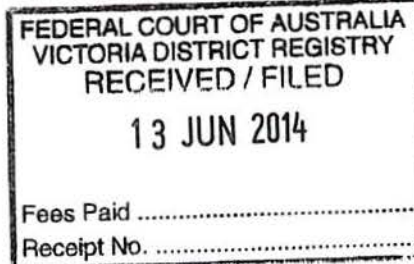


**Originating application for relief under section 39B Judiciary Act 1903**

No. of 2014

Federal Court of Australia  
District Registry: Victoria  
Division: General



**James Albert Hird**  
Applicant

**The Chief Executive Officer of the Australian Sports Anti-Doping Authority**  
Respondent

To the Respondent

The Applicant applies for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

**Time and date for hearing:** 27 June 2014 at 10.15 am  
**Place:** Owen Dixon Commonwealth Law Courts Building, 305 William Street, Melbourne VIC 3000

Date: 13 JUN 2014



Signed by an officer acting with the authority of the District Registrar

Filed on behalf of (name & role of party) The Applicant, James Albert Hird  
Prepared by (name of person/lawyer) Steven Amendola  
Law firm (if applicable) Ashurst Australia  
Tel (03) 9679 3000 Fax (03) 9679 3111  
Email steven.amendola@ashurst.com  
Address for service Level 26, 181 William Street, Melbourne, Victoria 3000  
(include state and postcode) DX 388, Melbourne

### Details of claim

On the grounds stated below, the Applicant applies for the following relief under section 39B(1A)(c) of the *Judiciary Act 1903*:

1. A declaration that the investigation conducted by ASADA into the applicant and players who were on the Essendon Football Club playing list during the 2012 football season (the **EFC players**) and which was referred to by ASADA as part of "Operation Cobia" (the **investigation**) was ultra vires the *Australian Sports and Anti-Doping Authority Act 2006* (the **Act**), the *Australian Sports and Anti-Doping Authority Regulations 2006* (the **Regulations**) and the NAD Scheme in Schedule 1 to the Regulations (the **NAD scheme**).
2. An injunction restraining the Respondent from issuing to the applicant a notice under clause 4.07A(2) of Schedule 1 to the Regulations arising from or relying on information obtained in the investigation.
3. An injunction restraining the Respondent from issuing any further notice under clause 4.07A(2) of Schedule 1 to the Regulations arising from or relying on information obtained in the investigation to any EFC player.
4. A permanent injunction restraining the Respondent from using any information obtained in the investigation for any purpose under the Act, the Regulations and the NAD Scheme.
5. Costs.
6. Such further or other relief as the Court considers just.



### The grounds of the application

The grounds of the application are as follows:

1. At all relevant times up to and including 31 July 2013, clause 3.27(1) of the NAD scheme, as contemplated by s 13(1)(f) of the Act, empowered ASADA to conduct investigations of possible anti-doping rule violations that may have been committed by athletes or support persons.
2. Neither the Act, the Regulations nor the NAD Scheme authorised ASADA to conduct a joint investigation with any other entity, including a sporting administration body.
3. At all relevant times up to and including 31 July 2013, the conducting of a purported "joint investigation" by ASADA was inconsistent with:

- 3.1 the constraints imposed on “entrusted persons” (including members of ASADA staff) by s 71 of the Act relating to the disclosure of NAD scheme personal information; and
- 3.2 the limited circumstances in which clause 4.21 of the NAD Scheme, read with s 13(1)(g) of the Act, permitted disclosure of that information to a sporting administration body – namely, where:
- (a) the information was information of the kind described in clause 4.21(1) of the NAD Scheme; and
  - (b) the disclosure was for the purpose of or in connection with an investigation into possible violations of the anti-doping rules within s 13(1)(g) of the Act; and

was ultra vires the Act, the Regulations and the NAD Scheme.

4. In about February 2013, but upon a date unknown to the Applicant, ASADA and the Australian Football League (the **AFL**) entered into an agreement whereby ASADA and the AFL would conduct, each with the aid of the other, what both ASADA and the AFL thereafter described as a “joint investigation”.
5. From February 2013, despite the absence of any power in ASADA to conduct a “joint investigation” and the constraints on the disclosure of information by members of ASADA staff, ASADA purported to conduct with the AFL a “joint investigation” into the Essendon Football Club, its players and officials in respect of allegations of an anti-doping rule violation under the Act (the **Joint Investigation**).
6. In the course of the Joint Investigation and before 1 August 2013, members of ASADA staff and employees of the AFL jointly interviewed the Applicant and EFC players and represented the investigation as:
- 6.1 a joint investigation between the AFL and ASADA; and
  - 6.2 an investigation to which the Applicant and EFC players were compelled to provide information in answer to questions asked by members of ASADA staff and employees of the AFL.
7. In August 2013, ASADA prepared and published a document it called an “interim report” (the **Interim Report**), based on information obtained during the Joint Investigation. The Interim Report was provided to:



- 7.1 the Applicant, on an undertaking of confidentiality that prevents the Applicant from revealing its contents;
- 7.2 members of the AFL executive;
- 7.3 each and every member of the AFL Commission; and
- 7.4 other persons and entities, unknown to the Applicant, who were neither athletes nor persons otherwise permitted by the Act and the Regulations to receive the information contained in the Interim Report.



8. Because:

- 8.1 ASADA lacked any power to conduct the Joint Investigation; and
- 8.2 the Joint Investigation contravened the constraints on disclosure of NAD scheme personal information;

the information collected during the Joint Investigation (being the information on which the Interim Report was based) cannot qualify as evidence or information received by the Respondent for the purposes of clause 4.07A(1) of the NAD Scheme, as it has stood since 1 August 2013.

9. In the absence of such evidence or information, the Respondent has no power, under clause 4.07A(1) and (2) of the NAD Scheme, to:
  - 9.1 determine that there is a possible non-presence anti-doping rule violation that warrants action by the Respondent; or
  - 9.2 give a notice to the applicant or any EFC player of that possible non-presence anti-doping rule violation.
10. The Applicant is and was at all relevant times employed as coach of the Essendon Football Club, a club registered with the AFL and subject to the AFL Regulations and the AFL Player Rules.
11. The issuing by the Respondent of any notices to the Applicant or to any EFC player arising from or relying on information obtained in the joint investigation is likely to cause the Applicant damage to his professional reputation and damage to his business interests.

**Applicant's address**

The Applicant's address for service is:

Place: Ashurst Australia, Level 26, 181 William Street, Melbourne, Victoria 3000

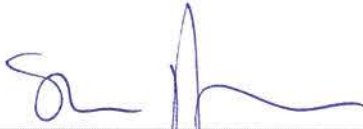
Email: steven.amendola@ashurst.com

The Applicant's address is 3 Lascelles Avenue, Toorak, Victoria 3142.

**Service on the Respondent**

It is intended to serve this application on the Respondent.

Date: 13 June 2014



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Signed by Steven Amendola  
Ashurst Australia  
Lawyers for the Applicant

