

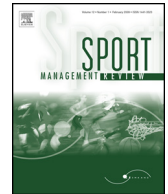


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### Sporting clubs and scandals – Lessons in governance

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#### ABSTRACT

This case study is based on actual events surrounding the 2011–2012 scandals relating to the use of performance enhancing drugs in two high profile sporting clubs in Australia: the Cronulla Sharks Rugby League Club and the Essendon Football Club. Both clubs were handed down sanctions that included fines and suspension of their respective senior coaches and players. The case explores events leading up to the scandal and its aftermath. The case includes a series of questions that can be used to stimulate class discussion in areas of governance, ownership structure, drugs in sport and stakeholders. It also includes ideas for more in-depth discussion of issues relating to the commercialisation of sport and shortcomings in governance with supporting references from academic and practitioner related articles. The case is ideal for any later year undergraduate or postgraduate courses with a business, strategy, sports management, or accounting focus.

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#### Teaching note

Educators have a unique opportunity to enhance student learning outcomes in connection with the current spate of corporate governance shortcomings and scandals in sporting clubs. Although several case studies have focused on the corporate governance failings of listed companies (Beattie, Fearnley, & Hines, 2011), it is also important for students to be exposed to corporate governance inadequacies in other contexts. Within the sporting scandal case study, we investigate whether drug use is directly related to the moral hazard issue. Have internal controls broken down leading to individuals or a small team of people running ambiguous programmes involving the use of performance enhancing drugs? This is generally a symptom of poor corporate governance where the three building blocks of corporate governance being leadership, planning, and organisational performance are not well established and linked. Therefore, unless effective steps are taken by clubs' central committees to curtail moral hazard, there will be personnel within the hierarchy that have a financial gain or other incentive to engage in excessive risk-taking. Generally, this type of behaviour often leads to questionable practices.

This case study is designed as a practical assignment where students have an opportunity to apply corporate governance principles to a real-life case. As the sporting scandals were widely covered by the media, students are expected to be

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enthusiastic and familiar with current events reported in the media. Shortcomings in corporate governance identified in the case study are expected to enhance students' ability to critically evaluate and review case study-based situations and identify applicable accounting regulations and financial statement consequences. The case study involves two well-known Australian sporting clubs: the Essendon Football Club (EFC) and Cronulla Sharks Rugby League Club (CS), and the events surrounding their recent scandals relating to the use of performance enhancing drugs. In late 2013, both clubs were rocked by fines and suspensions of senior coaches.

We have implemented this case study successfully in a third-year compulsory undergraduate accounting course over three semesters at a large, public Australian University. The case study highlighted stakeholder needs in sporting clubs and helped students understand governance principles and recommendations for such entities. The case is flexible enough to address the needs of courses in management, sport management, strategy and business. The objectives of the case include: understanding the meaning of corporate governance; understanding the principles of corporate governance applied to sporting clubs; and identifying corporate governance disclosures in financial reports for sporting clubs.

In the following sections, we provide a brief history of the National Rugby League (NRL) and Australian Football League (AFL) structure and a discussion focusing on corporate governance in sporting clubs. These sections should provide students with sufficient knowledge to maximise their learning potential through a case-based approach.

## 1. Background

This case focuses on two sporting clubs: Cronulla Sharks (NRL) and Essendon Football Club (AFL). As students may not be familiar with the two different sporting codes, it is worthwhile to provide some background information. It is also relevant to highlight the various corporate structures of the two clubs amongst the different codes.

### 1.1. NRL and AFL corporate structure

In terms of NRL clubs, corporate structure differs amongst the various clubs within the code. Clubs incorporated as public companies limited by shares include the Brisbane Broncos, which is listed on the Australian Securities Exchange (ASX), as well as the Manly-Warringah Sea Eagles, Gold Coast Titans and South Sydney Rabbitohs, which are unlisted. Clubs incorporated as public companies limited by guarantee include the Cronulla-Sutherland Sharks, Canberra Raiders, Canterbury-Bankstown Bulldogs, Melbourne Storm, Newcastle Knights, New Zealand Warriors, North Queensland Cowboys, Parramatta Eels, Penrith Panthers and Sydney Roosters. Finally, there are private company clubs limited by guarantee which include the St George Illawarra Dragons and Wests Tigers. With the exception of the Brisbane Broncos, all NRL clubs are either unlisted public or private companies.

In terms of AFL clubs, 17 are limited by guarantee (including the EFC), while only one AFL club (the West Coast Eagles) is a company limited by shares. For clubs limited by guarantee, ownership is vested in the hands of members providing certain rights (Foreman, 2006). Club members are defined in the club's constitution as individuals who hold membership tickets. Rights of members are outlined in each club's constitution, the Corporations Act 2001 and Common Law. The club's constitution outlines the right of members to vote at annual general meetings, electing directors to the board. The Corporations Act 2001 states guidelines for requisitioning a general meeting and for proposing a resolution to members.

## 2. Drugs in sport

Stewart, Adair, and Smith (2011) explain that over the past four decades there have been a series of drug use problems in sport (Hunt, 2007; Rushall & Jones, 2007). Much of this has been driven by the financial stakes involved in professional sport, creating powerful incentives for the use of performance enhancing substances (Rapp, 2009). At the same time, however, detection of drug use in sport can undermine the good standing and reputation of sport, bringing it into disrepute and fracturing the relationship it has with sponsors (Senate Standing Committee on Environment Recreation and the Arts, 1988; House of Representatives Standing Committee on Finance and Public Administration, 1990).

Rapp (2009) outlines five main arguments in favour of testing athletes for use of performance enhancing drugs: performance enhancing drugs should be banned in order to 'level the playing field'; player health suffers because of the use of performance enhancing substances; players using performance enhancing substances make poor role models for children who often idolise professional athletes; the blackmarket that sells performance enhancing drugs can use the leverage provided by their knowledge of an athlete's use of drugs to blackmail them into manipulating on-field competition in order to produce ill-gotten gains; and fans cannot enjoy a clean, free and untainted game by players using performance enhancing drugs. All of these reasons provide appropriate ground for imposing harsh sanctions for drug use, hoping to serve as a deterrent for future consumption.

In response to several drug scandals such as those that occurred at the 1996 Atlanta Olympics and the 1998 Festina affair at the Tour de France, athletes' continued use of performance enhancing drugs saw the International Olympic Committee (IOC) in 1999 establish the World Anti-Doping Agency (WADA) (Kirkwood, 2004; Mignon, 2002; Pampel, 2007). Within Australia, the Australian Commonwealth Government (ACG) adopted WADA's 1999 policy statement and in 1999 established the Australian Sports Anti-Doping Agency (ASADA). It was around this time that the NRL implemented its first performance enhancing drug policy (Stewart et al., 2011).

### 3. Corporate governance in sporting clubs

Corporate governance practices in sporting clubs are becoming a critical issue, especially when the stakes involved are very high. Governance is the system by which organisations are directed and managed. It influences how the objectives of the organisation are set and achieved, spells out the rules and procedures for making organisational decisions, and determines the means of optimising and monitoring performance, including how risk is monitored and assessed (Australian Sports Commission, 2015). There are six major corporate governance principles stipulated by the commission: board composition, roles and powers; board processes; governance systems; board reporting and performance; stakeholder relationship and reporting; and ethical and responsible decision making.

Previous research has investigated similar crises within European sporting clubs and all have been correlated with weak corporate governance (Andreff, 2007; Dietl & Franck, 2007; Michie & Oughton, 2005). Dietl and Franck (2007) provide a case study of the crises in the German Football League. They concluded that the financial crises were caused by governance failures and the peculiar German club governance structure is characterised by wide discretionary freedoms. 'Wide freedoms' resulted in clubs' investment in risky ventures. Andreff (2007) concludes that French football suffers from similar weak governance, resulting in lax financial management and a soft budget. Michie and Oughton (2005) investigate the corporate governance practices of professional football clubs in England and conclude that most clubs take advantage of a lack of guidelines in terms of disclosure, the appointment of directors, induction and training of directors, and risk management practices.

### 4. Case study questions

The following section provides an outline of suggested questions to be used as either a starting point for discussion in the classroom, on-line courses or more in-depth type questions that could be used as a basis for an assignment. The questions cover issues relating to the AFL, NRL, facts of the scandal involving the two clubs and also the role of ASADA and the Australian Sports Commission. We also consider issues relating to ethics and board diversity. As mentioned, we have used this case successfully over three semesters at a large Australian university in a third-year compulsory accounting course. It could also be used successfully in a sport management, business management, and business ethics course at both undergraduate and postgraduate levels.

If using the case for assignment purposes, good practice is to provide students with an introductory lecture on the facts of the case which provides information relating to timeline of events, definitions of governance, relevant research in the area and an introduction to the sports governance principles. The lecture also includes two short news videos (4 min each) that summarise the facts of the case on the day that each club broke the news to the public that they were being investigated. A follow-up tutorial/seminar is also conducted the week after the lecture to summarise the main issues that were covered in the lecture. This time is also used to comprehensively cover the learning rubric and the main objectives of the case.

The case can also be used as a focus for discussion in a tutorial/seminar/on-line discussion and there are several questions that are worthwhile considering if using the case in this way. The following section contains introductory questions for class room/on-line discussion.

#### Introductory questions for classroom/on-line discussion

1. Within the NRL and the AFL there are different corporate structures, e.g. companies limited by shares, companies limited by guarantee. Discuss the advantages and disadvantages of these different structures.
2. Within the NRL and the AFL there are different stakeholders, e.g. members, fans, lenders, shareholders. Explain the difference between the needs of the stakeholder for a club such as Essendon Football Club (company limited by members' guarantee) compared to a club such as Brisbane Broncos (listed company limited by shares).
3. What is the role of the Australian Sports Commission for sporting organisations for the NRL and the AFL?
4. Explain ASADA's overall role within the sporting community and its mission in drug enforcement.
5. Discuss the key changes made to the ASADA Act in 2013. What are the implications of these changes on sporting entities?
6. "One of the challenges moving forward for all sporting clubs is to ensure that you have the diversity of board directors to cover different areas" (O'Brien, 2013). Discuss the "ideal" diverse board for a football club as opposed to a "company".
7. For Cronulla Sharks and Essendon Football Club, compare and contrast the facts of the "scandal" that took place in 2011–2012.
8. With reference to the respective annual reports and media reports, identify the failures in corporate governance leading up to and at the time of the scandal for both the Essendon Football Club and the Cronulla Sharks Rugby League Club.
9. Identify relevant stakeholders in the clubs and discuss the extent to which the information disclosed by the club (in the annual report and on the club's website) addresses the relevant needs of those stakeholders you identify.
10. Discuss the ethical issues relating to the scandal that confronted the Board and senior management of the Essendon Football Club and the Cronulla Sharks Rugby Leagues Club.

The following section contains four questions that could form the basis for an assignment, or more in-depth analysis of the issues at the two clubs. All four questions require the students to conduct independent research (from both practitioner

and academic articles), referring to the Australian Sports Commission Sports Governance Principles and examining the contents of a sporting club's annual report.

### Assignment questions

11. Football clubs have grown in sophistication and size over the past two decades. Today's clubs require formal structures and delegated powers, processes and controls (Switkowski, 2013). The financial stakes involved in professional sport can create powerful incentives for the use of performance enhancing substances (Rapp, 2009). In your opinion, do you think it was the growth and commercialisation of the sport or do you think it was the governance (or lack of) that contributed to the “scandal” at the EFC? Discuss with reference to the facts of the case.

In your response, you should refer to financial information from the EFC annual reports 2001–2014. Reference should also be made to the Australian Sports Commission Sports Governance Principles. <http://www.ausport.gov.au/supporting/clubs/governance>. Your response must be supported by examples of research from at least three relevant academic research articles.

12. Discuss the role of and make recommendations on specific corporate governance mechanisms that may have prevented the specific events of 2011–2012 taking place in both clubs. In your response, you must also refer to the Australian Sports Commission Sports Governance Principles. Refer to the following link: <http://www.ausport.gov.au/supporting/clubs/governance>. Your specific recommendations must be supported by examples of research from at least three academic research articles.

13. ASX listed companies follow the ASX's Corporate Governance Principles and Recommendations in relation to corporate governance. These Principles and Recommendations set out practices that are likely to achieve good governance outcomes for the company. Choose an ASX listed company and examine the contents of its most recent annual report.

Provide specific examples from the annual report of the adoption of each one of the 8 Corporate Governance Principles and Recommendations. How do these disclosures differ compared to sporting club Corporate Governance disclosures e.g. EFC?

14. Choose one Australian sporting organisation e.g. Swimming Australia, Basketball Australia, Cricket Australia, etc. and one listed Australian company. Study the respective annual/financial reports and comment on the entity's corporate governance practices and policies (e.g. board composition, directors' meetings) reported in the annual/financial report. For each business entity, does the corporate governance information disclosed meet the needs of the relevant stakeholders? Discuss.

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# Sporting clubs and scandals – Lessons in governance

## Case study

The following is a case study based on the tale of two well-known Australian sporting clubs, the Cronulla Sharks (CS) – National Rugby League (NRL) and the Essendon Football Club (EFC) – Australian Football League (AFL). Both of these clubs were investigated for the use of performance enhancing drugs in 2013. The investigations resulted in both clubs being handed down severe sanctions including the suspension of their respective coaches, players and large fines. The forthcoming section provides the history of the two clubs and the events leading up to scandals in 2013. Developments subsequent to the 2013 sanctions are also discussed.

## 1. Background

Beginning in February 2013, two well-known Australian sporting clubs – the Cronulla Sharks (NRL) and the Essendon Football Club (AFL) – were investigated for use of performance enhancing drugs in their elite sports science programmes. News of the initial investigations was met with disbelief by supporters, players, club administrators and their respective governing bodies. What followed was a period of intense and rigorous independent investigation by the Australian Sports Anti-Doping Authority (ASADA), the NRL and the AFL. In August and December of 2013 respectively, sanctions were handed down to both clubs.

## 2. Case A – Cronulla Sharks

In the description of this case, we provide an introduction to the governing body of the NRL, a brief outline of the history of the Cronulla Sharks and a discussion of the scandal involving performance enhancing drugs that surfaced in 2013.

### 2.1. Introduction to the NRL

Evans (2012) explains that the origin of the NRL emanates from the English Rugby Football Union (RFU). Class struggles between largely upper-class leaders and working-class players led to player's demands for compensation in lieu of time taken off work to play. Rejection by upper-class leaders saw a breakaway movement (the Northern Union) being formed in 1895 where rules were also modified. Not long after, the landscape of Australian football changed. Rugby union was being run in a strict amateur orthodoxy by upper-class leaders and players revolted by switching to rugby league. By 1908 the first Australian rugby league competition had been formed, known as The New South Wales Rugby League (NSWRL). Since the inception of the NSWRL, rugby league has become one of Australia's most popular professional football codes. Reflecting a seismic geographic expansion of the game, 1995 saw governance of the game transferred to the Australian Rugby League (ARL). Shortly afterward, Kerry Packer and Rupert Murdoch, two of Australia's most powerful media identities began the Super League War (1995–1997). Mainly driven by competition for pay television content, it culminated in a breakaway Super League competition in 1997. Following an acrimonious battle, a merged National Rugby League (NRL) competition was formed in 1998, which was initially structured as a 20-team competition, currently decreased to 16. All but one team are based along the east coast of Australia, the only exception being in New Zealand. This merger saw the NRL competition between 1998 and 2011 run under a power-sharing arrangement between News Corporation Ltd and the Australian Rugby League (ARL), known as the Australian Rugby League Commission Limited. However, from 10<sup>th</sup> February 2012, the Australian Rugby League Commission (ARLC) was formed and took control of all aspects of the game in Australia. The ARLC is the peak governing body of rugby league in Australia. The ARLC is a public, not-for-profit company domiciled in Sydney, Australia. Performance is measured through participation numbers, television viewers and attendances. In 2012, its first year, the ARLC enjoyed a bumper season with 3.48 million supporters attending matches. This figure had climbed to 6 million in 2014, club memberships were more than 250,000, and free-to-air and subscription television ratings during the year increased. Rugby League is one of the most popular television shows in Australia, and by the end of the 2014 season claimed four out of the top five most watched programmes. It also has the largest social media following of any sport in Australia, with a total of 970,000 fans and 9 million viewers per year on Facebook (NRL, 2014). As of 31<sup>st</sup> October 2014, consolidated operating profit for the year was \$20,232,000, total assets were \$199,600,000 and total equity stood at \$84,923,000.

### 2.2. History of the Cronulla Sharks

This club resides in the southern suburbs of Australia's largest city, Sydney. This area is known as the Sutherland Shire. Rugby League was first played in the Shire in 1912 when the Sutherland Rugby League Football Club was formed (Larkin, 1998). Initially it was Rugby Union that was played but by the 1930s League had all but extinguished its competitor's profile (Brawley, 2012). During the 1960s there was a seismic shift, Rugby League in Sydney moved from a non-profit ethos to one of

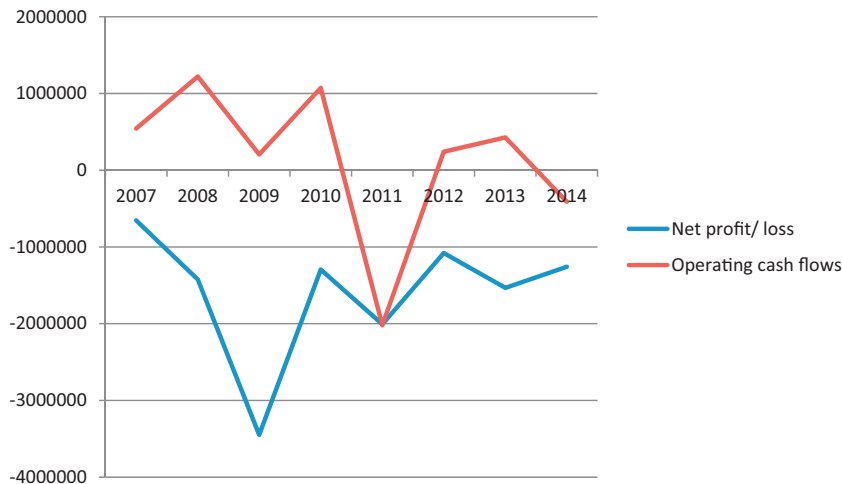


Fig. 1. Cronulla Sharks net profit and operating cash flows 2007–2014.

capital accumulation through the use of poker machines in league's clubs and the arrival of corporate sponsorship (Brawley, 2012). Cronulla was one of the first Rugby League teams within the state of New South Wales to enter the first grade competition with their football club fully financially supported by their social Leagues Club (Brawley, 2012).

Since its inception, the Cronulla Sharks have gone through periods of financial turmoil and success. While there were some glimpses of success during the 1970s and 1980s, this period was largely overshadowed by poor financial performance brought about through Australia moving in and out of recession (Brawley, 2012). In 1992, events came to a head when the club's major creditor, Westpac bank, instructed receivers to take over the club. The Sharks owed A\$7 million (Brawley, 2012). At this time Peter Gow became president of the League's Club and not long afterward major sponsors were secured which heralded the beginning of a golden period. During the period 1994 to 2002, Cronulla made the semi-finals every year except 1994 and 1998. The image of the club improved and record crowds were being attracted, which ultimately improved the financial position of the club. However, from 2003 onwards fortunes of the club began to waver. During the 2009 season, Cronulla's dire financial problems became public. The main issue involved poor cash flow brought on by low home game average gate takings, and several seasons of poor on-field performance which led to lower than average merchandise and corporate sponsorship. Following the troubles of 2009, the following year saw a major club restructure with a new board constructed by Chairman Damian Irvine and a new CEO Richard Fisk as well as club debt refinanced with the League's Club. Despite this, acrimony with the Chairman saw head coach Ricky Stuart and close friend CEO Richard Fisk resign. Fig. 1 highlights the tumultuous financial fortunes of the Cronulla Sharks in terms of net profit and operating cash flows during the period 2007–2014.

### 2.3. The Cronulla Sharks performance enhancing drug scandal

The public was informed on 12<sup>th</sup> February, 2013 that the Cronulla Sharks may be involved in a drugs scandal (ABC News, 2013a). Cronulla announced that they were one of six NRL clubs referred to in the Australian Crimes Commission report. The next day the Cronulla Sharks revealed that a period of their 2011 NRL season was under scrutiny (ABC News, 2013a). However, the Sharks said that none of their players had tested positive to performance enhancing substances. On 6<sup>th</sup> March 2013, the Australian Sports Anti Doping Agency (ASADA) revealed that they had interviewed up to 14 players in connection with banned supplements distributed or used in 2011 (ABC News, 2013b). The following day former ASADA Chief Executive Richard Ings urged Cronulla players to come forward while they had a chance to avoid a maximum two-year ban (ABC News, 2013a). Two days later the Cronulla Sharks's head coach Shane Flanagan stood down, pending a full management review at the club (ABC News, 2013b). Chief Executive of the Rugby League Players Association chief executive David Garnsey said anti-doping authorities should not punish players for taking performance-enhancing drugs if they were unwittingly sanctioned by their clubs. Garnsey felt this because rugby league players place trust in those who are in positions of knowledge and authority within their clubs, as an employee players merely follow the directions of their employer. In fact, within the ACC report, it was noted that illegal substances had been administered to players by club staff without players understanding the nature of the substances. If this were the case, then athletes were said to have been exploited and were not drug cheats. However, such players would be subject to the same sanctions as those who deliberately take prohibited performance enhancing substances. Former ASADA Chief Executive Richard Ings warned, however, that if Cronulla players attempted to claim consumption of banned substances was done unknowingly, ignorance would be no defence.

On 13<sup>th</sup> March 2013 club Chairman Damian Irvine resigned and claimed that players had been injected with horse drugs in 2011 when a sports scientist named Dr. Stephen Dank was at the Sharks. Head Coach Shane Flanagan also stood down on

full pay pending the outcome of a management review while football General Manager Darren Mooney, Head Trainer Mark Noakes, Club Doctor David Givney and Physiotherapist Konrad Schultz were sacked. Deputy Chairman Keith Ward announced that Cronulla, with support from the NRL, would bring in the former boss of the Brisbane Broncos Bruno Cullen to act in an interim chief executive role.

Following the revelations of the previous week, on the 19<sup>th</sup> of March, Cronulla told ABC Radio's AM programme that Stephen Dank was never employed by, or had never received money from the club (Meldrum-Hanna, 2013). As former ASADA Chief Executive Richard Ings pointed out, however, surely there must have been someone at Cronulla who had approved Dank's presence. Ings said "To have someone in such a position of being able to treat players, without them being formally on the books or formally acknowledged as being on the books, is extremely unusual and highly risky . . . I find it very difficult to believe that someone would work gratis in providing treatment to elite professional sporting athletes" (Meldrum-Hanna, 2013). On 22<sup>nd</sup> March, Shane Flanagan was reinstated as Head Coach of the club (The Australian, 2013).

By the 24<sup>th</sup> of July 2013, financial implications of the Cronulla drugs scandal began to become apparent. Assurance from the ARL Commission was pursued from current and former Directors of Cronulla that if the ASADA investigation brought the club into financial turmoil, that an emergency loan would be forthcoming (Proszenko et al., 2013). For example, if several players were suspended then the club's bottom line would be adversely affected. The ARL Commission had already provided staffing and financial assistance since the scandal broke and indicated that they would be prepared to provide a bailout loan. One reason for this support is that the ARLC has a commitment to schedule eight matches per round in order to receive a television rights deal valued at \$1 billion. The ARLC indicated that they would be prepared to not only support Cronulla through the scandal but indeed any other club in order to meet their obligations (Meldrum-Hanna, 2013).

Following former Chairman Damian Irvine's comments on 13<sup>th</sup> March 2013 concerning Dr Stephen Dank's involvement in injecting players with horse drugs in 2011, on 27<sup>th</sup> July 2013 it became public that Dank was suing the Cronulla Sharks over the drug allegations (SBS, 2013). In another surprising twist, perhaps as a result of potential legal implications, on 28<sup>th</sup> July 2013 Cronulla reinstated the staff it had initially sacked in March following the ASADA investigation of the supplements programme. In response, the Interim Chief Executive Bruno Cullen, who was appointed to the Cronulla club in March, quit and said that the Board's reinstatement of the four sacked staff members was premature. Cullen said the club should have waited until the completion of the anti-doping investigation before it moved to reinstate the four sacked staff members.

As outlined by Meldrum-Hanna (2013), following former Interim Chief Executive Bruno Cullen's resignation following reinstatement of the four sacked staff members, he was interviewed and he explained that the organisational structure of the Cronulla Sharks football club was like a football club of 20 years ago and was a disaster waiting to happen. Cullen felt that the Board disregarded his advice that they should not do anything concerning reinstatement of sacked staff until the ASADA investigation had been completed. Furthermore, with regard to Dr Stephen Dank, Cullen confirmed that according to club records, he was certainly not on the payroll and Cullen had not been aware of any direct payment to him. However, an investigation by ABC Television's 7:30 Report of internal emails sent by Head Coach Shane Flanagan in February 2013 discovered that a bank account was being run outside of the club's books to fund what was known as the High Performance Unit (HPU). According to the 7:30 Report's investigation, the HPU was operating outside of the Board's control after it was ordered to shut down. Flanagan told the 7:30 reporter that the account was used only to pay for Cronulla's new gym. The account, however, was kept from the attention of interim CEO Bruno Cullen. Cullen noted that according to his knowledge, Cronulla did not have a bank account with the Westpac bank as it did all of its banking with St. George bank.

The mere existence of a secret bank account puts into question the internal control and governance culture within the club. Whether it is the Board to blame or not, is debatable. However, when the Board is made up of former players with a lack of managerial experience, it is more likely to create an 'old boys' club mentality. More board diversity, independence, expertise, independent directors, gender diversity and rotation are required, mitigating any potential conflicts of interest. This is clearly a case where the Board has significant room to improve in terms of its governance. Any delays in reforming will cause stakeholders to blame the Board for their shortcomings.

Following several months of investigation into governance issues surrounding the supplements programme run by former strength and conditioning coach Trent Elkin in 2011, the NRL announced sanctions to be taken against the Cronulla Sharks on 17 December 2013. Sanctions imposed saw Cronulla Sharks coach Shane Flanagan suspended by the NRL for 12 months and the club fined \$1 million. Flanagan, however, was able to have his suspension reduced to nine months if he underwent "further education and training" (Walter, 2013). Flanagan ultimately completed a course in management and governance and thus served a nine-month ban for failing in his duty of care as a Head Coach (ABC News, 2014). Flanagan was eventually reinstated on November 4 2014 as Head Coach following his suspension. Regarding the penalty of \$1 million, \$400,000 may be suspended if certain corporate governance issues were resolved (Walter, 2013). Management changes were subsequently implemented and the \$400,000 remained suspended.

According to NRL's Chief Executive Officer Dave Smith, the well-being of the players had been put at risk and that inadequate supervision was in place at the club which enabled the injections to take place. Smith said that the club breached the NRL code of conduct and that both Flanagan and Elkin were responsible for its failings. That is, they were to be held largely accountable for the players' welfare. Elkin was accused of altering the club's supplements programme without the consent or indeed knowledge of the club's doctor. Elkin was said to have carried out the injections himself and allowed others, who were not adequately trained to also administer injections. Elkin's registration was therefore cancelled with the NRL and he was advised that any seeking of employment with the NRL would not be viewed favourably until at least two years had elapsed. Flanagan's suspension for one year was implemented due to his failure to properly supervise Elkin and

also failing to act appropriately when he discovered the changes made to the supplements regime. Ultimately, Elkin was banned for life from working with any NRL team (News.com.au, 2013).

Sanctions imposed on Cronulla by the NRL were separate to ASADA's investigation. Prior to the conclusion of ASADA's investigation on 20 August 2014, the NRL took no action against any players. Within an official NRL report, a case was made against individual player sanctions. For example, the shortcomings of Flanagan and Elkin were said to have caused the club to breach the NRL code of conduct "through a serious failure to safeguard the health and welfare of its players" Smith said. Also, "These failures have potentially put the well-being of players at risk and also exposed them to possible violations under our anti-doping code." In addition, CEO Dave Smith and Chief Operating Officer Jim Doyle said that Dank had not been interviewed and that instead their focus was on governance and player welfare issues. Furthermore, no action was expected to be taken against the four Cronulla officials who were sacked after the earlier internal investigation, Darren Mooney, Dr. David Givney, trainer Mark Noakes and physiotherapist Konrad Schultz (Walter, 2013). Specific issues raised in the NRL's statement listed preliminary findings against the CS for breach of the NRL Code of Conduct and they are as follows (Walter, 2013):

- Exposed players to significant potential risks to health;
- Exposed players to possible breaches of the NRL anti-doping rules;
- Allowed persons without the necessary qualifications and training to administer supplements to players;
- Failed to obtain the fully informed consent of players to the administration of particular supplements;
- Failed to ensure proper supervision and controls were in place;
- Failed to devise and implement systems to ensure compliance with appropriate standards to safeguard the health and welfare of its players; and
- Failed to take appropriate action when it became aware that unsafe practices had been in the administration of supplements to players.

On 20 August 2014, a number of past and present players who were with the Sharks in 2011 were given show-cause notices by ASADA, alleging they were administered banned drugs. At the time, only four of these players remained with the Sharks, the remainder had moved to other NRL teams, were playing overseas, or had retired (FOX Sports, 2014). They were given 36 h to accept a deal which was brokered by the NRL and ASADA. If the players admitted that they were administered with banned drugs, they would receive 12-month backdated bans that would see them miss just the last three games of the premiership season. On August 22, 2014 a total of 10 current NRL players accepted the ASADA deal which resulted in a 12-month ban, backdated to November 2013 for their involvement in the supplements programme at the club in 2011 (The Sydney Morning Herald, 2014). Shortly after, a number of other Cronulla players who were also with the club during 2011 were given similar show-cause notices (ABC News, 2014). These other players, however, were no longer playing in the NRL, some were playing overseas, some had retired, and some were playing at lower levels. None of these players were offered the same deal that was offered to the NRL players. Legal sources close to the case said that the situation was outrageous. One source said that the NRL lacked moral fibre and were more interested in supporting the brand. Each of the former NRL players rejected ASADA's assertions in the show-cause notices. They said they did not believe that they had a case to answer because the show-cause notices contained no evidence that they were administered with a prohibited substance.

#### 2.4. Conclusion of the Cronulla case

The Cronulla Sharks case raises some important questions: For example, is it about a failure of corporate governance/the board or a failure of management? It appears that staff failed to ask questions about the legitimacy and safety of the supplements regime. Noakes, Givney, Mooney and Schultz were all sacked at Cronulla for allegedly not informing the board about potential issues with the club's supplementation programme. If the board did not know, then how could they ask questions and/or stop it? Perhaps the answer can be found here. In July 2013, the Sharks announced that "in close consultation with management the Board have embarked upon the drafting and implementation of a board charter to assign responsibilities to the board and management for leadership, strategy and direction, compliance, accountability, performance and governance." So perhaps the board failed to create the right environment/culture for whistleblowers?

While the Cronulla sharks case is not a classic case of failings in corporate governance according to the traditional definition, there was a lack of communication between the board and senior management and a lack of internal controls in the football department. Players were not provided with a safe workplace and endured public scrutiny and pressure. The game was brought into disrepute. The main lessons to be learned are that there needed to be greater communication channels between the board and senior management and also a proper chain of command for senior management through implementation of adequate internal control processes.

### 3. Case B – Essendon Football Club

In the description of this case, we provide an introduction to the governing body – the AFL, a brief outline of the history of the Essendon Football Club and a discussion of the scandal involving performance enhancing drugs that surfaced in 2013.



### 3.1. Introduction to the AFL

The most popular and best-attended sporting league in Australia is AFL and crowds are the fourth largest in the world (Schmook, 2014). Administered by the AFL Commission, it was established in 1985 and its Commission members are elected by the clubs. AFLs' origins relate back to an Australian sportsman Tom Wills who had played sport in the United Kingdom and wanted a comparable sport for cricketers to maintain their fitness in their off-season (AFL, 2013a). The first AFL club formed was the Melbourne Football Club in 1858. The Victorian Football League (VFL) (the precursor to the AFL) was formed in 1896 and there were initially 8 foundation clubs consisting of Carlton, Collingwood, Essendon, Fitzroy, Geelong, Melbourne, St Kilda and South Melbourne. The first season of the VFL kicked off in 1897. There were four more clubs added to the foundation clubs. Total clubs remained at 12 until 1987, when major changes occurred in the VFL with two interstate teams entering the competition (the West Coast Eagles and the Brisbane Bears). In 1990, the VFL was renamed the AFL. This change led to significant changes in the way the game was marketed, player salaries, media coverage and weekly attendances. Today, there are a total of 18 teams including seven interstate teams.

In 2014, over 46,000 spectators attended home and away games (there are 22 weeks in a season) and nine games on every weekend (AFL, 2014). The AFL is the second most watched sporting game on TV in Australia, after cricket. It is in the top 10 leagues in the world in terms of average attendance and the only Australian football team in the top 10. There are a number of media organisations that share broadcasting rights including TV and the Internet. Members as of 2014 for the AFL were over 800,000.

### 3.2. History of the Essendon Football Club

The Essendon Football Club was one of the foundation clubs of the VFL (now the AFL) and commenced operations in 1873. Essendon became the first VFL club to win four premierships in a row. In the 1940s, 1950s and 1960s, the club was very successful, winning numerous premierships. In the 1970s and early 1980s the club was not as successful and did not win another premiership until 1984. The club won premierships in 1985 and 2000. To date, EFC has won a total of 16 premierships and is the most successful VFL/AFL club. As of 2014, the club has over 60,000 members.

The past 10 years have been mixed for the EFC in terms of financial performance and on-field performance. There have been several changes in the coaching team during this time including the longest serving coach ever – Kevin Sheedy – who coached the club for 27 years and won 4 premierships before leaving the club in 2007. Since then, a new coach Matthew Knights was appointed and was subsequently made redundant in 2010. On 28 September 2010, former champion James Hird was appointed coach along with former player and former Geelong premiership coach Mark Thompson appointed as assistant coach.

Between 2001 and 2012, EFC's overall profit improved from \$1,249,081 to \$12,345,536. However, upon closer examination this profit is misleading as a large component of it, over \$12,000,000, was contributed through club donations to its building programme for a new, state of the art Sports Centre. In fact, in 2010, the EFC made a loss of \$1,528,682 and a very small profit of \$721,517 in 2014. Without the large building donation, the club would have just broken even in 2014. Fig. 2 shows the club's net profit and operating net cash flows for the period 2000–2014.

### 3.3. The Essendon Football Club performance enhancing drugs scandal

The investigation into the EFC's sports science programme began on 5 February 2013 when the club invited the AFL and ASADA to investigate its supplements programme under Dr. Stephen Dank in 2012. Interestingly, this is the same person

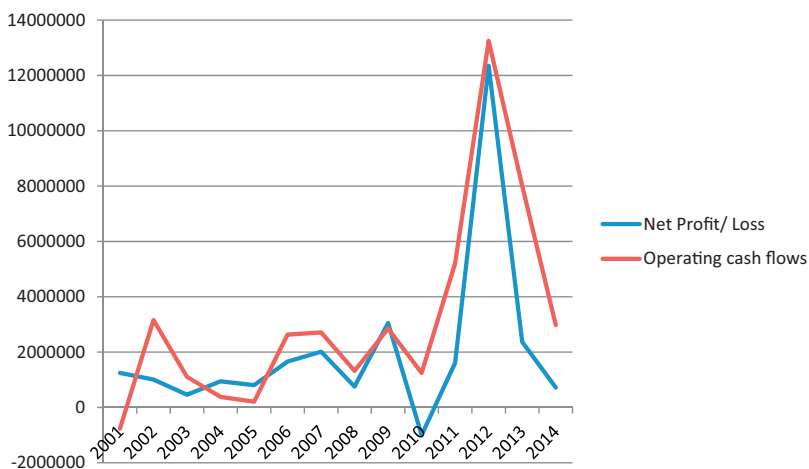


Fig. 2. EFC net profit and operating cash flows 2000–2014.

referred to in the previous section focusing on the Cronulla Sharks (CS). On 27 February, EFC appointed former Telstra boss Dr Ziggy Switkowski to conduct an independent review of the programme and its corporate governance practices. For the next seven months leading up to August 2013, charges and severe sanctions to EFC were applied, where a number of significant developments and new information in the case came to light.

In March 2013, it was revealed that some EFC players may have had up to 40 injections each in 2012 including the anti-obesity drug AOD-9604 which was declared as off limits and illegal by the World Anti-Doping Agency and ASADA. Some of the EFC players had signed consent forms that prescribed weekly injections at off-site locations near the EFC. In April 2013, Stephen Dank made the claim that coach James Hird had personally taken one of the drugs that was banned for the players which was subsequently denied by the coach (Herald Sun, 2013). In response to this revelation, the AFL Chief Executive Officer Andrew Demetriou made a public statement that Coach Hird should consider standing down. At the same time, Hird was interviewed at length as part of the ASADA/AFL investigations.

In May 2013, it was revealed that Dank ordered a second banned substance, Thymosin Beta 4 CJC-1295 from a biochemist with the name of Shane Charter (Herald Sun, 2013). The independent investigation by Dr Switkowski reported that the EFC had used exotic supplements, frequency of injections and marginalisation of traditional medical staff and this had created a “disturbing picture of pharmacologically experimental environment never adequately controlled or challenged or documented within the club” (EFC, 2013). In response, the club Chairman David Evans apologised to supporters and other stakeholders and promised “zero tolerance” towards risky practises. Following this statement, ASADA commenced interviews with EFC players, and asked them about 35 substances. Amidst the on-going pressures and the mounting evidence against the club, the then CEO of the club Ian Robson resigned and in his statement admitted that he was accountable for everything that happened at the club, including the supplements programme even though he did not know anything about it. He also admitted that the club had let down their players and their families (Herald Sun, 2013).

This surprise shock resignation by the CEO was followed by a statement made by team captain Jobe Watson, who admitted publicly on television to taking the drug AOD-9604. He claimed that he had signed the consent form and thought that the drug was legal at the time. Around this same time, AFL expert Gerard Whateley made revelations that EFC players would not be sanctioned for use of AOD-9604 because ASADA had told the club in 2012 that it was not banned (AFL, 2014). A couple of weeks later, the Chairman of the club – Evans – also resigned, claiming that he had a physical breakdown. A new Chairman was immediately appointed, board member Paul Little.

In August 2013, the AFL received a 400 page interim report from ASADA and following this report, the AFL announced that the club’s Coach James Hird, Assistant Coach Mark Thompson, Football Manager Danny Corcoran and Club Doctor Bruce Reid were all charged with the conduct of bringing the game into disrepute or prejudicing the interests of the AFL (AFL, 2013b). However, the AFL stated that the players were not issued infraction notices for anti-doping violations. Following the charges being made public, the Coach James Hird launched a very public Supreme Court of Victoria action (The Age, 2013).

It was determined by the AFL Commission that EFC had breached Rule 1.6 of the AFL Rules for bringing the game into disrepute. Specific charges against the club were that EFC (AFL, 2013b):

- Had a programme relating to the administration of supplements to its players in preparation for, and during, the 2012 AFL premiership season (the Programme);
- 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;
- Failed to ensure that persons with the necessary integrity, reputation and training were engaged by EFC to implement the Programme;
- Failed to devise or implement adequate systems or processes to ensure that some substances provided to and used by players were safe and were compliant with the AFL Anti-Doping Code and the World Anti-Doping Code;
- Failed to have proper regard to player health and safety, including failing to ensure that some substances had no potentially negative effects on players;
- Failed to audit or monitor some substances held on the premises of EFC; and
- Failed to take appropriate and adequate action when it became aware of facts that suggested unsatisfactory and potentially risk practices were occurring in relation to the administration of supplements.

The sanctions handed down to the EFC included paying a fine of \$2,000,000 to the AFL, forfeiting its place in the 2013 finals series and being prohibited from exercising its round one and two draft selections at the AFL national draft. Coach James Hird was suspended from the AFL for 12 months, and prohibited from accepting any AFL-related work during this period. Assistant Coach Mark Thompson received a \$30,000 fine. Football Manager Danny Corcoran was also suspended from the AFL for six months.

In May 2014, a separate investigation into the drugs scandal at EFC was announced by the Victorian WorkCover Authority. As soon as ASADA issued show-cause notices to 34 Essendon’s players on the 12<sup>th</sup> of June, the club launched application to challenge the legality of the joint investigation of AFL and ASADA (ABC News, 2014). In September, Federal Court ruled that the joint investigation was lawful. Although given another two weeks before ASADA presented the evidence to the Anti-Doping Rule Violation Panel, thirty-four players decided not to respond (Niall, 2014). In mid November, following the conclusion of the Anti-Doping Rule Violation Panel, which confirmed the sufficiency of current evidence, AFL issued

infracton notices to these players. Afterwards, ASADA began to outline its case against the club and its sports scientist at the tribunal hearing. On the 31<sup>st</sup> of March 2015, all 34 past and present players of Essendon were found not guilty. However, two months later, WADA announced that they will appeal this case to the Court of Arbitration for Sport (WADA, 2015).

### 3.4. Conclusion of the Essendon Case

The Essendon supplement scandal brings to bear the question: is it about a failure of corporate governance/the board or a failure of management? The Switkowski report states that “management processes broke down”. The board is only referred to in recommendations 8–12 of his report, and even then there is not a lot they are asked to do differently. Notwithstanding the possibility that Switkowski could potentially have been seeking to protect his acquaintances on the board, it would be expected that the board should have received greater criticism if they were really at fault. Yet there were no recriminations/sanctions of the directors (save for both Chairman falling on their swords), which suggest that the board should not be implicated directly in failing in its duty.

Essendon is a case where failings were not in accordance with the traditional definition of corporate governance, though there was a lack of communication between the board and senior management and a lack of internal controls. Since the scandal broke, there have been denials of any fault from the club, the coach, and personnel. From a moral and ethical perspective, this is difficult to acknowledge given that the club has accepted and been sanctioned for their failings. Either way, this event is a loss for all stakeholders involved. Essendon members and supporters (like any other club) would like to support their team playing football. Instead, they witnessed their team being drawn into long saga with mainstream media coverage, with all parties mud-slinging and washing dirty linen in public. The main lessons again are a need for greater communication channels between the board and senior management and also a proper chain of command for senior management through implementation of adequate internal control processes.

## 4. Conclusion

The Cronulla Sharks and Essendon supplement scandal cases are very similar and have highlighted that the linchpin was not failings in corporate governance in the traditional sense, but instead a general lack of communication between the board and senior management and a lack of internal controls. What is clearly required is a culture of transparency and openness. Members and supporters demand this environment and sporting clubs have a responsibility to operate at high standards. In both cases, it appears that the clubs lost sight of the real reason why they play sport and why they are supported with great passion by their fans. If these cases serve as an example to all Australian sporting clubs that poor management practices are unacceptable then all sporting bodies will be better off. Only time will tell whether lessons have been learnt through these scandals. In essence, all sports are driven by an objective to improve and eventually be successful. Sport allows athletes to work in teams and compete against their peers. Players have an opportunity to build life-long bonds with others, forming building blocks for life and more. It is therefore crucial that good management practices be established to create a level and safe playing environment for all to operate in.

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