

Senate Rural and Regional Affairs and Transport Legislation Committee

**Questions on Notice – Friday, 01 March 2013
Canberra, ACT**

**Inquiry into Australian Sports Anti-Doping Authority
Amendment Bill 2013**

Question Number	Page No's.	Witness	Question asked by	Answered
1	50	Australian Sports Commission	Senator Bernardi	06/03/13
2	64 - 65	Office for Sport	Senator Brandis	07/03/13

**SENATE RURAL AND REGIONAL AFFAIRS AND TRANSPORT
LEGISLATION COMMITTEE**

Inquiry into Australian Sports Anti-Doping Authority Amendment Bill 2013

Public Hearing Friday, 01 March 2013

Questions Taken on Notice – Australian Sports Commission

1. HANSARD, PG 50

Senator BERNARDI: I just have a couple of pertinent ones. After the press conference there was a lot of discussion through the media and a lot of supposition, and there were complaints that athletes associated with Essendon Football Club allegedly had gone off site and had injections and all sorts of things of that nature. It is not uncommon for athletes to be injected with legal substances or vitamins. Can you agree with that?

Mr Hollingsworth: I am sorry, the question is: is it unusual for athletes to be injected with legal substances?

Senator BERNARDI: Including vitamins or other supplements.

Mr Hollingsworth: I understand that practice does occur, although it does vary within the various sports and codes. I know the Australian Institute of Sport, for example, has clear protocols around that.

Senator BERNARDI: Meaning they do not provide injections to athletes?

Mr Hollingsworth: There are a very limited number of injections that are authorised by medical staff.

Senator BERNARDI: That are authorised by medical staff?

Mr Hollingsworth: Medical practitioners.

Senator BERNARDI: Would that include vitamin injections?

Mr Hollingsworth: Unfortunately, I cannot answer that. I need the chief medical officer here to answer that question. I do not know the answer.

Senator BERNARDI: Okay. You may want to take this on notice: what supplements are provided to scholarship holders within the Australian Institute of Sport? I would like a list of them.

Mr Hollingsworth: Supplements are used by Australian Institute of Sport athletes. The AIS has a very robust supplement policy in practice which categorises supplements into four tiers.

Senator EDWARDS: Could you give us a list of those?

Senator BERNARDI: I would like a list of them.

Mr Hollingsworth: I do not have a list here.

Senator BERNARDI: You might want to take that on notice...



Australian Government
Australian Sports Commission

Mr Stephen Palethorpe
Committee Secretary
Senate Standing Committee on Rural and Regional Affairs and Transport
RRAT.Sen@aph.gov.au

Dear Mr Palethorpe

On Friday, 1 March 2013 I appeared at a public hearing for the Committee's inquiry into the Australian Sports Anti-Doping Authority Amendment Bill 2012. In response to a question from Senator Bernardi, I undertook to provide details on the supplements that are provided to Australian Institute of Sport (AIS) athletes.

The AIS Supplements Program was initiated in 2000 following a major review of supplement practices, and is designed to provide world's best practice in the research, education and provision of sports foods and supplements for AIS athletes and coaches. The Program is overseen by the AIS Sports Supplement Panel which includes a number of senior AIS sports scientists.

Details about the Program, including a list of supplements that are provided to AIS athletes in specific situations to support training and performance, are available at: <http://www.ausport.gov.au/ais/nutrition/supplements/>.

Yours sincerely

Simon Hollingsworth
Chief Executive Officer

6 March 2013

**SENATE RURAL AND REGIONAL AFFAIRS AND TRANSPORT
LEGISLATION COMMITTEE**

Inquiry into Australian Sports Anti-Doping Authority Amendment Bill 2013

Public Hearing Friday, 01 March 2013

**Questions Taken on Notice – Office for Sport, Department of Regional
Australia, Local Government, Arts and Sport**

1. HANSARD, PG 64 - 65

Senator BRANDIS: I have one last question to you, Mr Eccles. Who wrote the statement of compatibility with human rights for this bill?

Mr Eccles: I would have to take that on notice—unless you can illuminate me.

Senator BRANDIS: There is no signature to the statement. Mr Rowe, do you know?

Mr Rowe: It is my understanding that it was prepared by the Office for Sport as part of the package of material prepared for the bill. Yes, that is the case.

Senator BRANDIS: And was legal advice taken in preparing this statement?

Mr Rowe: I am advised that we had discussions directly with the Attorney-General's Department.

Senator BRANDIS: So the Attorney-General's Department signed off on the statement of compatibility with human rights?

Mr Eccles: I am advised that they did not sign off on it but it reflects discussions.

Senator BRANDIS: It reflects their views?

Mr Eccles: I would need to take that on notice, Senator.

Senator BRANDIS: Were those discussions minuted? Or is there any other document—was there correspondence, for example?

Mr Eccles: Let me take that on notice, Senator.

Senator BRANDIS: You see, Mr Eccles, the statement of compatibility with human rights says:

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act—

And then it goes on to explain that, while the abrogation of 'the privilege against self-incrimination' and the abrogation of the presumption of innocence are, in the view of the author of the statement of compatibility, not in consistent with international human rights instruments.

Mr Eccles: Let me take that on notice and we will engage in discussions with AGD and others to get to the bottom of the question you are asking.

Senator BRANDIS: Please do. But we may take it that, in the view of the Attorney-General's Department, the abrogation of the privilege against self-incrimination, and the abrogation of the presumption of innocence, are not a violation of fundamental human rights and freedoms in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Mr Eccles: You cannot take that assumption—

Senator BRANDIS: Well, that's what it says.

Mr Eccles: from the evidence that I have provided. We will find out exactly the origins of the document and the level of consultation and the level of comfort that that department has.

Senator BRANDIS: I would like to know the name of the person with whom you consulted at the Attorney-General's Department as well.

Mr Eccles: Indeed.

Senator BRANDIS: Thank you.

Mr Eccles: Thank you.

**SENATE RURAL AND REGIONAL AFFAIRS AND TRANSPORT
LEGISLATION COMMITTEE**

Inquiry into Australian Sports Anti-Doping Authority Amendment Bill 2013

Public Hearing Friday, 01 March 2013

Questions Taken on Notice – Office of Sport

1. HANSARD, PG 64 - 65

Senator BRANDIS: I have one last question to you, Mr Eccles. Who wrote the statement of compatibility with human rights for this bill?

Mr Eccles: I would have to take that on notice—unless you can illuminate me.

Senator BRANDIS: There is no signature to the statement. Mr Rowe, do you know?

Mr Rowe: It is my understanding that it was prepared by the Office for Sport as part of the package of material prepared for the bill. Yes, that is the case.

Senator BRANDIS: And was legal advice taken in preparing this statement?

Mr Rowe: I am advised that we had discussions directly with the Attorney-General's Department.

Senator BRANDIS: So the Attorney-General's Department signed off on the statement of compatibility with human rights?

Mr Eccles: I am advised that they did not sign off on it but it reflects discussions.

Senator BRANDIS: It reflects their views?

Mr Eccles: I would need to take that on notice, Senator.

Senator BRANDIS: Were those discussions minuted? Or is there any other document—was there correspondence, for example?

Mr Eccles: Let me take that on notice, Senator.

Senator BRANDIS: You see, Mr Eccles, the statement of compatibility with human rights says:

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act—

And then it goes on to explain that, while the abrogation of 'the privilege against self-incrimination' and the abrogation of the presumption of innocence are, in the view of the author of the statement of compatibility, not inconsistent with international human rights instruments.

Mr Eccles: Let me take that on notice and we will engage in discussions with AGD and others to get to the bottom of the question you are asking.

Senator BRANDIS: Please do. But we may take it that, in the view of the Attorney-General's Department, the abrogation of the privilege against self-incrimination, and the abrogation of the presumption of innocence, are not a violation of fundamental human rights and freedoms in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Mr Eccles: You cannot take that assumption—

Senator BRANDIS: Well, that's what it says.

Mr Eccles: from the evidence that I have provided. We will find out exactly the origins of the document and the level of consultation and the level of comfort that that department has.

Senator BRANDIS: I would like to know the name of the person with whom you consulted at the Attorney-General's Department as well.

Mr Eccles: Indeed.

Senator BRANDIS: Thank you.

Mr Eccles: Thank you.

RESPONSE:

The Statement of Compatibility with Human Rights (the Statement) was prepared by the Office for Sport as part of the documentation that supported the Australian Sports Anti-Doping Authority Amendment Bill 2013.

For Australian Government Bills, the Minister responsible for the Bill is responsible for preparing the Statement of Compatibility. The Attorney-General's Department (AGD) does not have a clearance role in relation to Statements of Compatibility. However, AGD has developed tools to assist

agencies in undertaking assessments of the compatibility of proposed legislation with human rights and provides procedural assistance on Statements of Compatibility where requested. AGD is also able to, if requested, provide legal advice to agencies on the compatibility of legislative proposals with Australia's international human rights obligations.

In preparing the Statement, the Office for Sport discussed the criteria for assessments with the relevant area of AGD and sought comment on a draft version of the Statement. AGD did not provide legal advice on the Bill. The Office for Sport also sought internal legal advice on relevant aspects of the Statement.

The Office for Sport used the standard template for Statements of Compatibility developed by the AGD and located on its website. AGD also provided the Office for Sport with guidance on the factors that needed to be considered in the assessment. These factors include weighing up the need for the new powers against the potential impact on those human rights that may be affected by the Bill.

Article 14(3)(g) of the International Covenant on Civil and Political Rights (ICCPR) provides the right to be free from self-incrimination, such that, in the determination of any criminal charge against a person, a person may not be compelled to testify against him or herself or to confess guilt. Proposed section 13D engages Article 14(3)(g) of the ICCPR as it abrogates the privilege against self-incrimination.

The privilege against self-incrimination, however, may be subject to permissible limits. However, any limitations must be for a legitimate objective, and be reasonable, necessary and proportionate to that objective.

The abrogation of the privilege against self-incrimination in relation to a person answering questions or providing documents / things is necessary to support ASADA's investigations capabilities. ASADA's investigations have been delayed or hindered in the past because people have not turned up to an interview or have not answered questions at an interview. Without abrogating the privilege against self-incrimination, people could continue to evade answering questions and ASADA's capacity to undertake investigations would be virtually unchanged.

The Statement also notes that the Bill provides for both use and derivative use immunities. Any information, document or materials gathered as a result of the issue of a disclosure notice will be inadmissible as evidence against the person in criminal proceedings (except if the person provides false or misleading

information / documents), and in civil proceedings, except those relating to a possible anti-doping rule violation.

We also maintain that, regardless of the amendments in the Bill, the presumption of a person's innocence is maintained. The issuing of a disclosure notice is a mechanism for the collection of information. It does not assign guilt to anyone. This is determined through separate processes.

The adoption of the proposed amendments does not lessen any requirement for ASADA to establish an anti-doping rule violation to the comfortable satisfaction of a hearing panel bearing in mind the seriousness of the allegation which is made. This is the level of proof required under the World Anti-Doping Code.