

21 February 2013



Law
Institute
Victoria

Committee Secretary
Senate Standing Committees on Rural and Regional Affairs and Transport
PO Box 6100
Parliament House
CANBERRA ACT 2600

Per email: rrat.sen@aph.gov.au

Dear Secretary

Australian Sports Anti-Doping Authority Amendment Bill 2013

We refer to the recent announcement regarding proposed amendments to the *Australian Sports Anti-Doping Authority Act 2006* (Cth), via the *Australian Sports Anti-Doping Authority Amendment Bill 2013* (**the Bill**). The Law Institute of Victoria (**LIV**) welcomes the opportunity to comment on the Bill. We set out our comments below.

The LIV agrees, in principle, that the Australian Sports Anti-Doping Authority (ASADA) be provided additional investigative functions, including the power to issue disclosure notices. However, the LIV does have some concerns regarding the implementation of some of the other proposed changes.

Item 9 of the Bill proposes the addition of section 13D, which provides that a person is not excused from complying with a disclosure notice on the basis that doing so may incriminate them or expose the person to a penalty. The LIV wholly opposes the introduction of this provision; the right not to self-incriminate is a widely accepted, and is a basic, human right which the LIV believes should not be abrogated. The LIV is of the view that, if ASADA has proof that a breach of the Code has occurred, the burden of proving such should rest with ASADA, not with a person to provide evidence establishing their guilt. Furthermore, the LIV believes that any immunities provided by the new provisions are insufficient to protect athletes.

There are a number of provisions within the Bill which include the burden of proving a negative; that is the Bill requires that persons prove that something does not exist. For example, the Bill introduces a new definition for 'evidential burden'. The Bill provides that an evidential burden includes "adducing or pointing to evidence that suggests a reasonable possibility that the matter exists **or does not exist**" [emphasis added]. Additionally, section 13C(2)(b) requires a person to have "taken all reasonable steps...and has been unable to obtain it". The LIV does not agree that persons should have the burden of proving that something does not exist. The LIV believes that the burden of proof should rest with ASADA to establish that the person has the item, or knowledge, which they are purported to have.

The LIV notes that draft provisions are silent as to common law privileges between persons and their lawyers and/or doctors. The LIV seeks clarification that the implementation of the new legislation will not infringe on these common law rights.

The Law Institute of Victoria
is a member of



Law Council
OF AUSTRALIA

Law Institute of Victoria Ltd

ABN 32 075 475 731

Ph (03) 9607 9311 Fax (03) 9602 5270

Email lawinst@liv.asn.au

470 Bourke Street Melbourne 3000 Australia

DX 350 Melbourne GPO Box 263C Melbourne 3001

Website www.liv.asn.au

The LIV does not oppose the introduction of wider information sharing capabilities between various law enforcement, Commonwealth and sporting bodies, provided that basic privacy protections are adhered to.

Finally, the LIV believes that where matters pertain to organised crime, despite an overlap with ASADA functions, the Australian Crime Commission (**ACC**) may be better placed to investigate and deal with the matter. The ACC already has broad powers to investigate matters that contain elements of criminality, eliminating the need to provide such powers to additional government bodies, whose powers would remain largely unchecked.

Yours sincerely,

Reynah Tang
President
Law Institute of Victoria