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Committee Secretary
Senate Standing Committees on Community Affairs
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CANBERRA ACT 2600

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Dear Secretary

Australian Sports Anti-Doping Authority Amendment Bill 2014

We refer to the recent announcement regarding proposed amendments to the Australian Sports Anti-Doping Authority Act 2006 (Cth) (the **Act**), via the Australian Sports Anti-Doping Authority Amendment Bill 2014 (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, with the amendments to the Act that simplify and streamline the anti-doping process in Australia.

The replacement of the current "Register of Findings" with the "Violations List" is a positive, and long-overdue, step to modernise anti-doping matters in Australia. The current two-stage process; being the 'show cause' process followed by the 'infraction notice' process, is unique to Australia and has long been considered to be antiquated and "clunky" in operation. It has resulted in matters in Australia taking a comparatively long time to process as compared to other jurisdictions. The amendments will remove the "Register of Findings" procedure, and simply detail the nature of a person's doping offence on the Violations List upon finalisation under their sport's anti-doping policy. Such an approach - where the national anti-doping organisation charges a person using the sport's anti-doping policy as a first step - will finally align the anti-doping process in Australia with the practice in the rest of the world.

The LIV also supports the new a right of appeal within Australia for athletes who are denied access to medication under a Therapeutic Use Exemption (**TUE**) process.

However, the LIV does have some concerns regarding the implementation of some of the other proposed changes.

The Bill introduces the new anti-doping rule violation (**ADRV**) of "prohibited association" as per the recent amendments to the World Anti-Doping Agency (**WADA**) Code. This has the effect of creating a violation for an athlete or support person to associate, in a professional or sports related capacity, with another person who is either currently serving an anti-doping sanction from sport, or who has been criminally convicted or professionally disciplined for an action that would constitute an ADRV.

By way of example, it will be considered an ADRV for an athlete to be trained by a coach who is currently serving an anti-doping sanction. However, it may also be considered an ADRV for an athlete to be trained by a coach who has been professionally disciplined for an action that would constitute an ADRV. For example, a coach who is also a teacher, lawyer, doctor or other industry professional, and who has been disciplined for, say, recreational drug use by their industry body.

The LIV understands the need to keep those individuals serving anti-doping sanctions away from sport until their sanction expires. However, to create an anti-doping rule violation in circumstances where an individual associates with a person who has simply been "professionally disciplined", the LIV wholly opposes.

There is no guidance as to what "professionally disciplined" means. Such discipline may be ad-hoc, and is unlikely to be subject to the same onus of proof, burdens of evidence, or appeal rights as an anti-doping rule violation hearing.

Despite the protections proffered in the explanatory memorandum; such as the CEO of ASADA needing to advise an athlete of a potential prohibited association, presumably to give the athlete time to end the association, such measures may not be practical in a professional team sporting organisation sense, in which an athlete is unlikely to have any say as to the support staff they are required, or directed, to associate with.

In any event, such protections do not address the fundamental issue that if a sport or regulator does not have evidence to charge and convict a person who has received a "professional discipline" ban with an ADRV, then it is disingenuous for the sport or regulator to charge an athlete with a doping violation for associating with such a person.

The LIV further believes that the amendments have failed to address some major concerns with the anti-doping process in Australia; such as the requirement for matters to be heard by the Court of Arbitration for Sport (**CAS**) at first instance. The cost of CAS hearings in Australia, in circumstances where other jurisdictions such as the UK, the USA, France, Canada and New Zealand have no-cost tribunals available, is an ongoing issue for sport that in the LIV's opinion is required to be addressed.

Further, in the Human Rights Implications section of the explanatory memoranda, published on the parliamentary website, there is reference to the presumption of innocence relating to some allegations made against individuals under this bill (and the Act). We believe that with the right of “innocent until proven guilty” being abrogated substantially for most prosecutions under this legislation, there should be countervailing protections for athletes to defend themselves properly, and hence have guaranteed access to legal representation.

This is even more pronounced given that a finding of guilt may be career ending. It is therefore incumbent on the government to ensure legal representation is available in order to meet the minimum criteria it sets out in the explanatory memoranda of **removing the presumption of innocence only if**

you maintain the rights of the accused. This only occurs if athletes subject to heavy penalties can defend themselves. This accords with clause 14(2) of the *International Covenant on Civil and Political Rights*.

If you would like to discuss any of the matters raised in this submission please do not hesitate to contact me or Angela Gidley-Curtin, Commercial Law Section Lawyer

Yours sincerely

Geoff Bowyer
President
Law Institute of Victoria