

Rule of Law Institute Annual Conference 2013

Sport, Drugs and the Rule of Law

15 November 2013

*Welcome speech by Mr Robin Speed President of the
Rule of Law Institute. (Check against Delivery)*

Good afternoon and welcome.

My name is Robin Speed and I am the President of the Rule of Law Institute.

The Institute is a non-political Institute established to foster the rule of law in Australia.

The topic of this year's annual conference is sport, drugs and the rule of law.

At a press conference held earlier this year, the then Minister for Sport, the then Minister for Justice and the Australian Crime Commission released the findings of the Commission on the integrity of Australian sport and the relationship between professional sporting bodies, prohibited substances and organised crime.

The report raised serious allegations of match fixing, drug taking and organised crime in Australian sport.

At the press conference the Minister for Justice said:

The findings are shocking and will disgust Australian sports fans. It's cheating but it's worse than that. It's cheating with the help of criminals.

That statement set the scene – allegations based on undisclosed and incomplete investigations had become by the end of the press conference – “findings” of fact.

Naturally the so called “findings” received national and international media coverage.

What we have seen in the intervening months is drip feeding of information, the smearing of reputations with little or no evidence to substantiate the smearing and clubs pleading guilty to whatever they can to get out of the spotlight and continue in business.

This raises the question whether the press conference was held, to seriously deal with the issue of drugs in sport, OR to promote the individual interests of the Ministers.

I suggest that it had more to do with the latter, than the former.

The Australian Crime Commission primarily deals with terrorism and serious crime and it performs this very important function well.

It has extensive powers of compelling any person to attend before it, be examined and required to answer all questions, even those which incriminate.

Witnesses are required to keep confidential that they have been called or given evidence, under threat of a jail sentence.

It is an intimidating, powerful and secret organisation.

The Rule of Law Institute is concerned that since 2012 the Commission has power to disclose all or parts of the information it has collected to private industry, including clubs. There is no requirement that the Commission presents a full and balanced picture of that information or that it is satisfied that a jury is likely to convict a person of an alleged offence. In fact there need be no criminal offence.

This disclosure to the world, to Australia and Australian sporting organisations, was the first public use of the new powers. And, in my opinion, it was totally unsatisfactory. Unsatisfactory to Australia, sporting organisations, clubs and Australian sportsmen and women, and in the fight against the use of drugs prohibited by sporting codes.

The information provided is given authority and credence by the provision of the information by an organisation such as the Australian Crime Commission.

Assuming that you were a club president or that you were acting for a club and receive a call from the Australian Crime Commission that it was investigating whether players or sport officials were using or administering drugs prohibited by the relevant sporting code. What would you have done?

Particularly when you are not free to disclose any information given to you by the Commission – unless the Commission has authorised it.

In practice what the clubs have done is go to water. I don't blame them for not looking at

the truth of the allegations but rather working out how the club survive by a plea of guilty and who should be the “sacrificial lamb”. That, I suggest, is an impossible and intolerable position to be in.

The Commission made it clear in its report that it “was never exclusively about criminal arrests, charges and prosecutions” but was about “hardening” the Australian sporting environment from serious and organised criminal penetration.

In other words it was not about reporting any widespread or particular use of drugs illegally or contrary to a sporting code, it was about warning the suspected involvement of serious crime in sport. I do not question that the Commission acted bona fide, but this could have been done quietly by the Commission informing the Australian Federal Police who, if they thought it justified, could have discussed the matter with sporting organisations – without damning publicly Australian sporting organisations, clubs and sportsmen and women.

I suggest that the report and press conference has had the following “hardening” effects.

First, that the reputation of Australian sport has been unnecessary and unwarrantedly seriously damaged. To say that the matter could have been handled better is a gross under-statement. It couldn't have been handled worse. If the relevant Ministers were serious about drug taking in sport, the matters of concern should have been kept private at least until the allegations were investigated and a determination made as to whether they had any proper basis. Then consideration

should have been given to how best to use the information. Drug taking is a serious social issue and their use of drugs in sport is also a complex social issue.

Second, faced with the Australian Crime Commission and the selected release of information and the cone of silence that those who the information is made available were under, left the sporting organisation and clubs in a hopeless and intolerable position. The thought of senior officials attending the Commission's offices and being told about the allegations – but only allowed to take notes, says it all.

In the real world sporting organisations and clubs could not fight the allegations – their only alternative was to cave in and try and negotiate the best deal possible and to work out who was to be the “sacrificial lamb”. That is not fair or just.

Third, the sacrificial lambs, being the sportsmen and women and administrators, were even more in a hopeless and intolerable position. They could not defend themselves and they did not know what to confess to. In the end it was easier to accept a ban and to put an end to the matter for the good of the club. That is not fair or just.

Fourth, the distinction between the criminal use of drugs and use of drugs in breach of sporting code was lost. They were treated as the same things. That is a dangerous precedent. Treat people as criminals and don't be surprised if they act and become criminals.

Fifth, the presumption of innocence of players and club officials went out the window. You

cannot blame the media. You can blame the Ministers present at the press conference. Without such presumption you can see how it is “expedient” to plead guilty.

This conference is designed to foster discussion on this, and other, issues.