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The Parliament of the Commonwealth of Australia

# Report 70

**Treaty tabled on 9 November 2005**

United Nations Educational, Scientific and Cultural Organization International  
Convention Against Doping in Sport

December 2005  
Canberra

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ISBN 0 642 78741 7 (printed version)

ISBN 0 642 78742 5 (HTML version)



# Contents

Membership of the Committee .....	iv
Resolution of appointment.....	vi
List of abbreviations .....	vii
List of recommendations .....	viii
<b>1 Introduction .....</b>	<b>1</b>
Purpose of the report.....	1
Briefing documents .....	1
Conduct of the Committee's review .....	2
<b>2 UNESCO International Convention Against Doping in Sport .....</b>	<b>3</b>
Introduction .....	3
Background .....	3
Obligations .....	4
Implementation.....	6
Future treaty action.....	7
Consultation .....	8
Costs .....	9
Entry into force.....	9
<b>Appendix A - Submissions.....</b>	<b>13</b>
<b>Appendix B - Witnesses .....</b>	<b>15</b>
Monday, 28 November 2005 – Canberra .....	15



## Membership of the Committee

Acting Chair Mrs Margaret May MP  
(from 5/9/05)


Chair Dr Andrew Southcott MP  
(until 5/9/05)

Deputy Chair Mr Kim Wilkie MP

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	Mr Michael Keenan MP	Senator Brett Mason
	Ms Sophie Panopoulos MP	Senator Santo Santoro
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		Senator Dana Wortley

## Committee Secretariat

Secretary	Gillian Gould
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Research Officer	Serica Mackay
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## Resolution of appointment

The Resolution of Appointment of the Joint Standing Committee on Treaties allows it to inquire into and report upon:

- a) matters arising from treaties and related National Interest Analyses and proposed treaty actions presented or deemed to be presented to the Parliament;
- b) any question relating to a treaty or other international instrument, whether or not negotiated to completion, referred to the committee by:
  - (i) either House of the Parliament, or
  - (ii) a Minister; and
- c) such other matters as may be referred to the committee by the Minister for Foreign Affairs and on such conditions as the Minister may prescribe.



## List of abbreviations

ACT	Australian Capital Territory
AFL	Australian Football League
ASADA	Australian Sports Anti-Doping Authority
ASC	Australian Sports Commission
ASDA	Australian Sports Drug Agency
Cth	Commonwealth
NIA	National Interest Analysis
RADO	Regional Anti-Doping Organisation
UNESCO	United Nations Educational, Scientific and Cultural Organization
WADA	World Anti-Doping Agency



# Recommendation

## 2 UNESCO International Convention Against Doping in Sport

### Recommendation 1

The Committee supports the *United Nations Educational, Scientific and Cultural Organization International Convention Against Doping in Sport* and recommends that binding treaty action be taken.





## Introduction

### **Purpose of the report**

- 1.1 This Report contains advice to Parliament on the review by the Joint Standing Committee on Treaties on the *United Nations Educational, Scientific and Cultural Organization (UNESCO) International Convention Against Doping in Sport* (Paris, 19 October 2005) tabled in Parliament on 9 November 2005.<sup>1</sup>

### **Briefing documents**

- 1.2 The advice in this Report refers to the National Interest Analysis (NIA) prepared for the proposed treaty action. This document was prepared by the Department of Communications, Information Technology and the Arts which is responsible for the administration of Australia's responsibilities under the treaty. Copies of the NIA may be obtained from the Committee Secretariat or accessed through the Committee's website at:

[www.aph.gov.au/house/committee/jsct/9november2005/tor.htm](http://www.aph.gov.au/house/committee/jsct/9november2005/tor.htm)

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<sup>1</sup> Australia, House of Representatives 2004-05, *Votes and Proceedings*, No. 69, p. 757; Australia, Senate 2004-05, *Journals*, No. 57, p. 1369.

- 1.3 Copies of this treaty action and NIA may also be obtained from the Australian Treaties Library maintained on the internet by the Department of Foreign Affairs and Trade. The Australian Treaties Library is accessible through the Committee's website or directly at:  
[www.austlii.edu.au/au/other/dfat/](http://www.austlii.edu.au/au/other/dfat/)

## **Conduct of the Committee's review**

- 1.4 The review contained in this report was advertised in the national press and on the Committee's website.<sup>2</sup> Letters were also sent inviting comment from all State Premiers, Chief Ministers, Presiding Members of Parliament and from individuals who have expressed an interest in being kept informed of proposed treaty actions such as this one. A list of submissions and their authors is at Appendix A.
- 1.5 The Committee also received evidence at a public hearing held on 28 November 2005. A list of witnesses who appeared before the Committee at this public hearing is at Appendix B. A transcript of evidence from the public hearing may be obtained from the Committee Secretariat or accessed through the Committee's website at:  
[www.aph.gov.au/house/committee/jsct/9november2005/hearings.htm](http://www.aph.gov.au/house/committee/jsct/9november2005/hearings.htm)

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<sup>2</sup> The Committee's review of the proposed treaty action was advertised in *The Australian* on 16 November 2005. Members of the public were advised on how to obtain relevant information and invited to submit their views to the Committee, both in the advertisement and via the Committee's website.

# UNESCO International Convention Against Doping in Sport

## Introduction

- 2.1 The *United Nations Educational, Scientific and Cultural Organisation* (UNESCO) *International Convention Against Doping in Sport* (Paris, 19 October 2005) (the Convention) is designed to eliminate doping in sport and to harmonise anti-doping practices internationally to ensure all athletes are subject to a comprehensive and fair testing regime.<sup>1</sup>

## Background

- 2.2 The World Anti-Doping Agency (WADA), which was established in 1999 to promote and coordinate anti-doping in sport internationally, released the World Anti-Doping Code (the Code) in March 2003. The Code provides the framework for anti-doping policies, rules and regulations and as such is the core document of WADA.<sup>2</sup>
- 2.3 In the same month of its release, 80 States, including Australia, in addition to the International Olympic Committee, the International Paralympic Committee, all Olympic sports, national Olympic and

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1 National Interest Analysis (NIA), para. 5.

2 World Anti-Doping Agency (WADA) website [www.wada-ama.org/en/dynamic.ch2?pageCategory.id=267](http://www.wada-ama.org/en/dynamic.ch2?pageCategory.id=267) accessed 22 November 2005.

Paralympic committees in each country signed the *Copenhagen Declaration on Doping in Sport*, a non-binding agreement which recognises and supports the Code.<sup>3</sup> As at 12 October 2005, 181 countries had signed.<sup>4</sup>

- 2.4 The *Copenhagen Declaration on Doping in Sport* also committed Parties to the development of a legally binding and enforceable agreement.<sup>5</sup> The current Convention was drafted as a result of this commitment.

## Obligations

- 2.5 The Committee was informed that the Convention, in effect, is an internationally recognised and legally binding agreement obliging Member States to implement the Code in their jurisdiction. The Code itself is 'best practice' in relation to anti-doping practices.<sup>6</sup>
- 2.6 The Convention obliges Member States to:
- adopt measures, which may include legislation, regulation, policies or administrative practices, to give effect to the obligations in the Convention (Article 5)
  - restrict the availability of prohibited substances or methods to athletes including by taking measures against trafficking (Article 8)
  - facilitate doping controls and support national testing programs (Article 12)
  - withhold financial support from athletes or support personnel who violate anti-doping rules (Article 11)
  - withhold financial support from sporting organisations that are not in compliance with the Code (Article 11).<sup>7</sup>
- 2.7 The Convention includes two Annexes which form an integral part of the Convention: the Prohibited List and the Standard for Granting Therapeutic Use Exemptions.<sup>8</sup> The Prohibited List is reviewed by

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3 World Anti-Doping Agency (WADA) website, see note 2; NIA para. 6.

4 NIA, para. 13.

5 NIA, para. 6.

6 Mr Colin Lyons, *Transcript of Evidence*, 28 November 2005, p. 4.

7 NIA, para. 17.

8 NIA, para. 28.

WADA on an annual basis and contains all substances and methods that are prohibited.<sup>9</sup>

- 2.8 The Committee was informed that there are three criteria for prohibition of a substance. A substance or class of substances will be prohibited if it is:
1. performance enhancing
  2. contrary to the spirit of sport
  3. harmful to health.<sup>10</sup>
- 2.9 Under the *Australian Sports Drug Agency Act 1990* (Cth), the Australian Sports Drug Agency (ASDA) is authorised to test ‘competitors’ for prohibited substances. The meaning of ‘competitors’ is defined in section 2A of the ASDA Act.
- 2.10 The Standard for Granting Therapeutic Use Exemptions governs the legitimate application of drugs, for instance, in the treatment of injury.<sup>11</sup>
- 2.11 The Committee was interested to learn how the Code is enforced in individual sports and in particular whether the Australian Football League (AFL) is code compliant. Representatives from ASDA informed the Committee that the AFL is Code compliant.<sup>12</sup> ASDA also informed the Committee that in addition to testing ‘competitors’, they have:
- A public interest testing program for most of our Olympic sports and quite a few other sports, but we also enter into contractual arrangements with the professional sports such as AFL. The majority of testing done on AFL players is through a contractual arrangement between the AFL and ASDA, but that is not to say we could not also conduct a public interest test on one of their players, because they quite clearly meet the definition of competitor.<sup>13</sup>
- 2.12 The Committee was interested to hear how the Code impacts on sub-elite athletes. Representatives from the Department of

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9 NIA, para. 31.

10 Ms Anne Gripper, *Transcript of Evidence*, 28 November 2005, p. 4; see also NIA, para. 31.

11 Mr Brent Espeland, *Transcript of Evidence*, 28 November 2005, p. 3.

12 Mr Brent Espeland, *Transcript of Evidence*, 28 November 2005, p. 3.

13 Ms Anne Gripper, *Transcript of Evidence*, 28 November 2005, p.5.

Communications, Information Technology and the Arts informed the Committee that:

The WADA code, which is what this convention is implementing, is world's best practice and sends a strong signal to the sub-elite athletes.<sup>14</sup>

- 2.13 Representatives from the Australian Sports Drug Agency further informed the Committee that:

I think both the code and the convention foresee much more broadening of the anti-doping effort internationally. Certainly, both those documents make reference to athletes who are not at the elite level yet, particularly with respect to education and making sure that information and education gets out to a much wider and much younger group of athletes, rather than the elements of the code that refer more to testing and compliance issues.<sup>15</sup>

## Implementation

- 2.14 The Convention establishes broad obligations and it is left to the individual State to determine the best way of implementing these obligations.<sup>16</sup> Australia is already compliant with the key obligations of the Convention as a result of new and existing policy, administration and legislation.<sup>17</sup>
- 2.15 Australia's mandatory obligations under the Convention are met through the Australian Sports Commission (ASC), which requires sports in receipt of Government grants to have Code-compliant anti-doping policies, and ASDA, which carries out its current drug testing program in accordance with the Code.
- 2.16 However, in 2006, the Australian Sports Anti-Doping Authority (ASADA) is expected to be operational.<sup>18</sup> ASADA will investigate doping allegations, present doping cases before sporting tribunals,

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14 Mr Colin Lyons, *Transcript of Evidence*, 28 November 2005, p. 9.

15 Ms Anne Gripper, *Transcript of Evidence*, 28 November 2005, p. 9.

16 Mr Colin Lyons, *Transcript of Evidence*, 28 November 2005, p. 4; see also Article 5.

17 NIA, para. 19.

18 ASADA was established in line with the Federal Government's 2004 policy *Building Australian Communities Through Sport*, and its commitment to strengthening its *Tough on Drugs in Sport Strategy*.

take over the policy development, approval and monitoring role of the ASC, assume the existing functions of ASDA and incorporate the Australian Sports Drug Medical Advisory Committee.

- 2.17 The Committee received a submission from the Chief Minister of the Australian Capital Territory (ACT) advising that the ACT may need to make some legislative or policy changes to implement obligations relating to Article 8 and the legitimate medical use of prohibited substances.<sup>19</sup> In order for anti-doping officials to be legally supplied with a Prescription Only Medicine, they would need to be licensed under current ACT medicine legislation or the legislation would need to be amended.
- 2.18 In assisting other countries in the region to comply with the Convention, the Committee received evidence on Australia's participation in a Regional Anti-Doping Organisation (RADO). RADO will be based in Fiji and will cover 11 Oceania countries.<sup>20</sup> RADO will be funded by WADA and will provide these countries 'with an anti-doping organisation that can service their needs.'<sup>21</sup>
- 2.19 The Committee encourages Australia's provision of practical and logistical support to this pilot project.

## Future treaty action

- 2.20 It is expected that regular changes will be made to the Annexes, in particular the Prohibited List, which is maintained by WADA. Under the Convention Parties have 45 days to object to a proposed amendment to the Annexes. Unless two-thirds of parties object, the amendment is approved and will come into force 45 days after notification by the UNESCO Director-General, except for any State Party that has previously notified its objection.
- 2.21 Due to the timing of any future amendments, it is unlikely that the Committee will have an opportunity to inquire into them before they come into force.
- 2.22 The National Interest Analysis emphasises that the amendment procedures in Article 34 only relate to changes to the two Annexes,

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19 Mr Jon Stanhope, Chief Minister of the Australian Capital Territory, *Submission 2*.

20 Ms Anne Gripper, *Transcript of Evidence*, 28 November 2005, p. 5.

21 Ms Anne Gripper, *Transcript of Evidence*, 28 November 2005, p. 5.



primarily the Prohibited List, and that it is in Australia's interest that the Annexes to the Convention remain in congruence with the most recent list issued by WADA.<sup>22</sup> This was reiterated at the public hearing:

The difficulty is that the prohibited list is an annexure to the convention and there needs to be a process undertaken through the committee in relation to that annexure to the convention ... It is just that if the Australian government was not in a position to accept those changes to the prohibited list in terms of its obligations under the convention, there would in fact be a discrepancy because there would be the list that the Australian government had agreed to at the international level and there would be the new list that was about to come into force on 1 January which would apply to athletes.

- 2.23 In these circumstances, the Committee recognises the importance of consistency between the Prohibited List of the Convention and the WADA list and accepts that it may be unable to inquire into the changes before they enter into force.

## **Consultation**

- 2.24 States and Territories were provided with preliminary and final drafts of the Convention. Victoria, Queensland, New South Wales, Tasmania and Western Australia provided written comments and Victoria and Queensland raised specific issues. These issues were subsequently resolved between those State and Federal agencies.
- 2.25 The Department of Communications, Information Technology and the Arts held meetings to consult with key agencies, including the Australian Customs Service, the Department of Health and Ageing, the Department of Agriculture, Fisheries and Forestry, the Attorney-General's Department, the Australian Sports Commission and the Australian Sports Drug Agency.

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22 NIA, para. 32.

## Costs

- 2.26 The funding of the Convention will be determined at the UNESCO General Conference every two years. It is likely that the Convention will be funded through the existing UNESCO budget, a voluntary fund established under Article 17 or a combination of the two.<sup>23</sup> Australia may choose to make a voluntary contribution and this is unlikely to exceed US \$250,000 in any financial year.<sup>24</sup> This is in line with the amount that Australia currently contributes to WADA.<sup>25</sup>
- 2.27 The Committee was informed that Australia's contribution to the voluntary fund would be determined by what the money was needed for, the resources required and what other countries are likely to contribute.<sup>26</sup> In addition:
- A lot of the resources for monitoring compliance with the Convention will be provided indirectly via WADA ... WADA will report to the [United Nations] Secretariat on a yearly basis on compliance with the WADA code by countries that have ratified the Convention.<sup>27</sup>

## Entry into force

- 2.28 The Convention will come into force on the first day of the month that follows the end of a one month period after 30 States have submitted an instrument of ratification, acceptance, approval or accession to the UNESCO Director-General.<sup>28</sup>
- 2.29 The Minister for the Arts and Sports, Senator the Hon Rod Kemp wrote to the Acting Chair of the Joint Standing Committee on Treaties to express Australia's preference to be one of the first States to accede to the Convention, and submit an instrument of ratification to the UNESCO Director-General before 31 December 2005.<sup>29</sup>

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23 NIA, para. 22.

24 NIA, para. 23.

25 Dr Paul Salmon, *Transcript of Evidence*, 28 November 2005, p. 8.

26 Mr Colin Lyons, *Transcript of Evidence*, 28 November 2005, p. 8.

27 Mr Colin Lyons, *Transcript of Evidence*, 28 November 2005, p. 8.

28 NIA, para. 3.

29 Senator the Hon Rod Kemp, Minister for the Arts and Sports, letter, 2 November 2005.

- 2.30 The Minister further advised that prompt ratification would be consistent with Australia's role as an international champion of the anti-doping cause, our involvement with the negotiation of the Convention and membership of the WADA Executive Committee and Foundation Board, and our role as host of the 2006 Commonwealth Games.<sup>30</sup>
- 2.31 The Committee also received evidence that since the Convention was adopted unanimously on 19 October 2005, all Parties to the Convention have been moving towards ratification:
- My understanding from attending WADA meetings recently is that all countries are doing whatever they can within their legal and constitutional constraints to ratify before 31 December. I do not think there are any examples that we are aware of where countries are dragging the chain in terms of not doing what they could do.<sup>31</sup>
- 2.32 The Committee recognises the importance of ratifying the Convention in an expedient manner but the Committee also notes that the use of a National Interest Exemption may not have been required had the Committee been asked to progress its review of the Convention in view of the upcoming Commonwealth Games.
- 2.33 The Committee appreciates the importance of this matter but encourages the use of National Interest Exemptions only where the Committee would be unable to report on the particular treaty in time.

### **Recommendation 1**

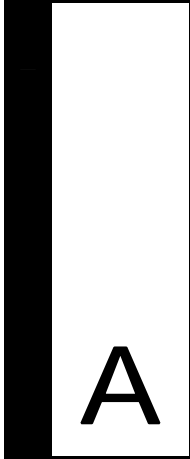
**The Committee supports the *United Nations Educational, Scientific and Cultural Organization International Convention Against Doping in Sport* and recommends that binding treaty action be taken.**

30 Senator the Hon Rod Kemp, Minister for the Arts and Sports, letter, 2 November 2005 and NIA para. 4.

31 Mr Colin Lyons, *Transcript of Evidence*, 28 November 2005, p. 3.

**Mrs Margaret May MP**  
**Acting Committee Chair**



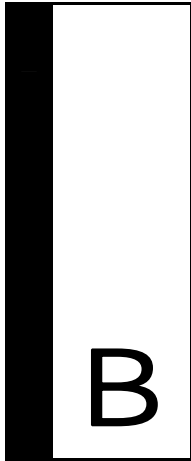


## Appendix A - Submissions

### Treaty tabled on 9 November 2005

- 1 NSW Government
- 2 ACT Government
- 3 Government of Western Australia
- 4 Department of Communications, Information Technology and the Arts





## Appendix B - Witnesses

**Monday, 28 November 2005 – Canberra**

**Attorney-General's Department**

Mr Mark Zanker, Assistant Secretary, International Trade and Environment Law Branch, Office of International Law

**Australian Sports Commission**

Ms Nadine Cohen, Manager, Planning and Reporting

Mr Brent Espeland, Director, Sport Performance and Development

**Australian Sports Drug Agency**

Ms Anne Gripper, General Manager, Operations

**Department of Communications, Information Technology and the Arts**

Mr Colin Lyons, Acting Chief General Manager, Arts and Sport Division

Dr Paul Salmond, Manager, Anti-Doping Sport Branch, Arts and Sport Division

**Department of Foreign Affairs and Trade**

Mr Andrew Rose, Executive Officer, International Law and Transnational Crime Section, Legal Branch, International Organisations and Legal Division



Mr Michael Jonathan Thwaites, Executive Director, Treaties  
Secretariat