

CHAPTER TWO

RESPONSES TO INTERIM REPORT AND FOCUS OF SECOND REPORT

INTERIM REPORT RESPONSES

Positive Responses

2.1 The Interim Report was tabled in the Senate on 14 June 1989. Its conclusions and recommendations (set out in Chapter One of this Report) were carefully drafted so as to be capable of efficient implementation.

Recommendations One and Two

2.2 The Interim Report's first two recommendations centre on the holding of a meeting of Commonwealth and State Ministers responsible for sports and health matters to consider the Report. The Committee understands that such a meeting is imminent. The Secretary of the Department of the Arts, Sport, the Environment, Tourism and Territories (DASETT), advised on 2 January 1990 that these recommendations:

require consideration of issues by Commonwealth and State Ministers recognising that with certain recommendations health ministers will be involved. The normal mechanism for such discussions is the Sport and Recreation Minister's Council (SRMC). The matter has been listed for discussion at SRMC, but the most recent scheduled meeting had to be deferred due to the unavailability of several Ministers. The Minister, therefore, intends to write to his State and Territory counterparts in the near future informing them of the initiatives outlined under recommendations three and four above, and, in particular, seeking their co-operation in enacting complementary legislation to allow ASDA to operate in the States and Territories. (Letter to Committee Secretary, 2 January 1990)

2.3 The Committee considers that the need for this meeting is now urgent and looks for the meeting to be convened as a priority in fulfilment of the objective outlined by the DASETT Secretary.

Recommendation Three

2.4 The surveys advocated in the third recommendation of the Interim Report have been initiated, although they are yet to be completed. The DASETT Secretary has advised:

In relation to recommendation three, ASDA has appointed a person to conduct the survey on drug use in Australian sport in 1989. Work undertaken to date has involved background reading and the holding of discussions with key people (e.g. ABS, sports scientists and sports medicine specialists) about the methodology of the survey. (Letter to Committee Secretary, 2 January 1990)

The Committee anticipates that the Australian Sports Drug Agency (ASDA) will complete the three different surveys with the result that credible empirical evidence will be available on performance drug usage in Australia and attitudes towards it. This will assist ASDA and other authorities in devising further strategies towards the problem.

Recommendation Four

2.5 The fourth recommendation of the Interim Report places the most direct substantive obligation on the Commonwealth Government. It advocates that the Commonwealth Government establish an authority to carry out sports drug testing in Australia. Three months after the tabling of the Interim Report, the Minister, Senator Richardson, advised the Committee Chairman of the steps taken to respond to that recommendation; that letter is reproduced at Figure 2.1. Subsequently, on 26 November 1989,



MINISTER FOR THE ARTS, SPORT, THE ENVIRONMENT,
TOURISM AND TERRITORIES

15 SEP 1989

Senator John Black
Chairman
Senate Standing Committee on
Environment, Recreation and the Arts
Parliament House
CANBERRA ACT 2600

Dear Senator Black,

You will be aware that on 21 August 1989 I announced the Government's new funding initiatives for sport. Your Committee's Report made a valuable contribution to the development of these new policies. Indeed, the centrepiece of the new policy is the substantial increase in our efforts to combat the use of performance enhancing drugs.

The Government has implemented your recommendation that an independent body be established to carry out sports' drug testing in Australia. This body will be known as the Australian Sports Drug Agency. We will probably need legislation to ensure its necessary independence, however, this will take some time. In the interim, the Government will fund increased testing by the Agency, which, as you know, is part of the Australian Sports Commission (ASC).

The ASC Board recognises that the Agency must operate independently. Therefore, the Agency's office has moved away from the ASC. The Board has also established a five person Committee to which the Agency will report regularly. The Agency will also report to me.

In addition, the ASC will be seeking from National Sporting Organisations an undertaking that they cooperate with the Agency. In the absence of this cooperation, it is this Government's policy to withdraw funding.

Yours sincerely,

GRAHAM RICHARDSON

GRAHAM RICHARDSON

the Minister advised the Chairman of further developments on this matter. In that advice, the Minister confirmed that:

- . ASDA had been established to
 - (i) educate about the dangers of sports drugs;
 - (ii) carry out independent sampling and testing.
- . ASDA would conduct 1,000 tests in 1989/90 rising to 2,000 in 1990/91.
- . More than \$4 million will be allocated to ASDA over the next four years.

(Letter to Committee Chairman, 26 November 1989)

2.6 In his letter of 2 January 1990 the Secretary of DASETT expanded on the Minister's advice. The Secretary stated that, with regard to Recommendation Four, the Government has:

- . physically relocated the Australian Sports Commission's (ASC) Anti-Drugs Campaign and established it as the Australian Sports Drug Agency (ASDA);
- . while recognising ASDA's status as a part of an Australian Sports Commission funded program (which reports to an interim Board) ensured that all reports on drug testing are communicated direct to the Minister for Arts, Sport, the Environment, Tourism and Territories and all matters of ASDA policy are agreed between the ASC and the Department (DASETT);
- . increased the budget of ASDA from \$238,000 in 1988-89 to \$858,000 in 1989-90;
- . made a policy commitment to provide \$4 million to ASDA over the next four years;
- . made a policy commitment to conduct 1,000 drug tests in 1989-90 rising to 2,000 per annum from 1990-91 onwards;
- . through the ASC, entered into agreements with national sporting organisations

(NSO's) which require the organisations to abide by the Government's policy on drugs in sport. The policy requires NSO's to advise their athletes of the likelihood that they will be required to undergo testing and to have an effective code of enforcement. It also includes a provision that Commonwealth funding can be withdrawn if the organisation fails to comply with the policy;

- . agreed that analysis of tests undertaken for ASDA by the Australian Government Analytical Laboratories will be deemed to be in the "public interest" and, therefore, fully funded from the Budget. AGAL is currently considering options for the structure of its organisation to undertake this work and will take up cost implications in the context of the 1990-91 Budget;
- . sought from the International Olympic Committee (IOC) full accreditation for AGAL as an IOC laboratory. Following inspections early in 1990 it is hoped that AGAL will become the only fully accredited IOC laboratory in the Southern Hemisphere;
- . through ASDA, negotiated with professional sports for testing athletes on a full cost recovery basis. In principle agreement has already been reached with a number of professional sporting organisations;
- . developed options for the establishment of ASDA as an independent authority and initiated drafting for the purposes of putting appropriate legislation before the Parliament in the Autumn 1990 session. The matter of appeals (recommendation 4(ii)) will be taken up in the context of this legislation;

2.7 Importantly, Recommendation Four (iii) advocates that the Commonwealth Government request the drug testing agency and the Australian Olympic Federation (AOF) to adopt a strong international role. On 24 October 1989, Senator Richardson issued a media release advising of an international anti-doping initiative. He advised that a meeting of senior Government sporting officials from Canada, UK, New Zealand and Australia

would meet in Canberra in December to develop a Commonwealth Anti-Doping Charter. That meeting is discussed in Chapter Thirteen of this Report. Senator Richardson advised:

This major initiative follows on from the 2nd World Conference on Anti-Doping in Sport held in Moscow two weeks ago. Australia was represented at this conference by the Chairman of the Senate Inquiry into Drugs in Sport, Senator John Black, and Chief Executive of the Australian Sports Drug Agency, Mr Steve Haynes.

The Moscow meeting is also discussed in Chapter Thirteen of this Report. (In addition to dealing with these matters in more detail, Chapter Thirteen discusses other international activities on the part of the Committee and the Australian Government. These include the Committee Chairman's visits to the Dubin inquiry in Canada and the Rome Anti-Doping Conference.) In his advice of 2 January 1990, the Secretary of DASETT referred to Recommendation Four (iii), stating that the Government has:

- . through representation at the Second World Conference on Drugs in Sport in Moscow, USSR, adopted a strong international role. This will be followed up by Australian representation at conferences in Canberra (December 1989) and Auckland (February 1990) aimed at developing bilateral and multilateral agreements on drug testing and ensuring that Australian athletes are not disadvantaged by Australia's strong stance on the drugs issue. At this time it is fair to say that there is considerable international momentum towards anti-doping agreements and that Australia's leadership in this role has been widely recognised; and
- . through ASDA, raised the issue of the inadvertent use of performance enhancing drugs with the Australian Sports Medicine Federation (ASMF). ASDA will advertise in the ASMF journal seeking the views of Australian sports medicine specialists. This issue has already been raised at the Second World Conference on Drugs in Sport in Moscow.

Recommendations Five and Six

2.8 The fifth and sixth recommendations, like Recommendations One and Two, require consideration of issues by a meeting of Commonwealth and State Ministers, a meeting that the Committee understands is imminent.

Recommendations Seven and Eight

2.9 The seventh and eighth recommendations of the Interim Report concern control of the importation of anabolic steroids and other sports drugs. The Committee notes that both of these recommendations have received some appropriate attention already. The Secretary of DASETT has confirmed:

With regard to recommendations seven and eight, the Australian Customs Service has been made aware of the recommendations and will consider possible action following the tabling of the Committee's final report. Action has been initiated to have anabolic steroids covered under Customs Prohibited Import Regulation 5(a)(i). This will require licensing with the Department of Community Services and Health for all importers of natural and synthetic anabolic steroids, be they intended for animal or human use.

The ways in which this action applies are discussed in Chapter Twelve of this Report.

Recommendation Nine

2.10 The ninth recommendation was directed to the Australian Medical Association and Medical Boards, advocating policies prohibiting the prescription of drugs purely to enhance sporting performance. On 15 December 1989 the Assistant Secretary General of the AMA advised:

The Australian Medical Association does not, at this stage, have a global policy on the use of performance-enhancing drugs in sport. However, Federal Council of the Association resolved in May 1987:

"That Federal Council deplores the practice of prescribing anabolic steroids for athletes where the sole intent is to improve athletic performance."

Consequently, that resolution now represents formal Association policy.

Also relevant to the matter is the undertaking given by all applicants for AMA membership, required prior to their election, to abide by principles stated in the Declaration of Geneva. One such principle states:

"The health of my patient will be my first consideration."

Given the existing policy enunciated in 1987 and the required commitment by members to the principles laid down in the Declaration of Geneva, it appears likely that the Association may well agree to support the thrust of the Standing Committee's Recommendation Nine of its Interim Report, quoted above ...

The Association will certainly consider adopting policies recommending prohibition of inappropriate prescribing of performance-enhancing drugs. To this end, your letter will be referred to the Science and Education Committee of Federal Council for a report. However, I iterate that implementation of such policies would probably be up to the Medical Boards of the several states and territories, and possibly would also involve other interested bodies.

The Association will provide a definitive reply to Recommendation Nine in the Interim Report of the Standing Committee as early as possible in the new year.

(Letter to Committee Secretary, 15 December 1989)

Recommendation Ten

2.11 The tenth recommendation of the Interim Report advocated three initiatives to be taken by the meeting of Ministers outlined in the first recommendation. The first initiative depends on the holding of that meeting; it advocates rescheduling (to Schedule Eight) of anabolic steroids for human use.

2.12 The second initiative also depends on the Ministers' meeting; the recommendation advocates that, using the Western Australian legislation as a model, the sale or supply of anabolic steroids without prescription should be a criminal offence.

2.13 The third initiative advocated the imposition of the same degree of control on veterinary anabolic steroids as applies to anabolic steroids for human use. With regard to this recommendation, both Western Australian and Queensland have already proscribed the human use, or supply for human use, of veterinary products. Western Australia gazetted regulation 33A of the Poisons Regulations on 11 November 1988, and on 19 August 1989 Queensland gazetted subregulation A5.04 of the Poisons Regulations 1973. These issues are discussed in Chapter Twelve of this Report.

Recommendation Eleven

2.14 The Committee approves of the response of some organisations and individuals to its Recommendation Eleven concerning controls on gymnasiums and health centres. In addition to individual indications of support for this proposal, the Queensland Gymnasium Owners Association has inserted the following into its Code of Ethics: 'Not sell, distribute, condone or knowingly tolerate anabolic steroids and other sport enhancing drugs'. Nevertheless, the Committee anticipates that the Ministers' meeting will result in further progress on this issue.

Recommendation Twelve

2.15 The twelfth recommendation required the AIS to investigate the approval of medical supply purchases without medical officer authorisation, contrary to AIS policy, with a view to disciplinary action. The Secretary of DASET has advised that:

With regard to recommendation twelve, the Chairman of the Australian Sports Commission

and the Deputy Chairman have interviewed several Commission personnel and athletes named in the Interim Report. The Minister has written to the Chairman of the Commission asking him to review the action taken. The ASC also intend to respond to the Committee following the tabling of the final report. (Letter to Committee Secretary, 2 January 1990)

The extent to which this response is inadequate is discussed in the next section.

Inadequate Responses

2.16 In addition to the twelve recommendations put forward in the Interim Report, there were numerous conclusions drawn. Such conclusions represent the considered judgement of the Committee on various matters of particular concern. The Committee anticipated that appropriate authorities would conduct their own investigations of those matters based on the Committee's findings. It was expected that appropriate action would then proceed.

2.17 The Committee's concern about inadequate responses centred on the views that it expressed concerning sports drugs and the Australian Institute of Sport. Responses to conclusions about two persons were of particular concern - the athlete Jane Flemming, and the administrator Peter Bowman.

Ms Jane Flemming

2.18 The June 1989 Interim Report published Ms Flemming's in camera confession that, at the Ulster Games in Belfast on 30 June 1986:

[Mr Plant] came up to me [at the javelin throwing area] and asked me if I would urinate in a bottle for Sue Howland because she had been picked for testing ... He gave me a drink bottle ... I went and weed in a bottle and apparently it got passed off as Sue's urine sample. (In Camera Evidence, p. 275)

2.19 This attempt to corrupt a drug test was closely examined in the Interim Report and the following conclusions were drawn:

Conclusions

7.101 Ms Howland clearly provided a urine sample which was not tested positive, since she went on to compete at the Edinburgh Commonwealth Games in July 1986, winning a bronze medal. She seemed genuinely unaware of the attempted substitution of urine in her name at Belfast. Mr Plant confirmed that Ms Howland was not involved in the attempted substitution in any way.

7.102 The Committee finds it unacceptable that although Ms Flemming held an AIS scholarship and discussed the incident with Messrs Kemp, Hilliard and Rice, all AIS coaches, no formal report was made to the AIS, in the first instance by Kemp, although he wrote to the AAU, and in the second instance by the other two. The Committee rejects Mr Bowman's suggestion that because Ms Flemming was representing Australia and not the AIS, the substitution incident was a matter for the Australian Athletic Union and not the AIS. Under the Code of Ethics which AIS scholarship holders are required to sign, the athletes agree, inter alia, to 'abide by both the rules and the spirit of my sport'. In the Committee's view, Ms Flemming is liable for disciplinary action by both the Australian Institute of Sport and the Australian Athletic Union.

7.103 The Committee notes that although Ms Flemming regards him as a friend, Mr Plant had never sought to assure Ms Flemming that her urine sample was never used, despite over two years having elapsed since the incident occurred.

7.104 The Committee notes that Mr Rice gave an account of the incident which was different from that given by all other witnesses, when he suggested that Ms Howland had approached Ms Flemming to provide a urine sample which had been refused. His letter was otherwise detailed and accurate. By comparison, the other respondents were vague about such matters as the timing and the nature and extent of discussions, but were at least consistent in their general theme. The Committee expresses its concern about whether Mr Rice's recollections failed him in this

instance or whether he had sought to provide a different version of events to explain his subsequent lack of action. The Committee concludes that because they did not inform the AIS management about the involvement of an AIS scholarship holder in a clear breach of sporting ethics and AIS guidelines, all three AIS track and field coaches failed to properly discharge their responsibilities. On this matter, as on others discussed in this Chapter, AIS coaches have shown an unsatisfactory attitude towards meeting their obligations to the AIS.

7.105 The reasons for the eventual lack of action by the Australian Athletic Union (now called Athletics Australia) are yet to be explained despite it having been asked on 21 February 1989 to provide advice to the Committee. The only response so far received included copies of correspondence relating to this matter, but gave no detailed information about the AAU's handling of its investigation into the incident. The AAU explained that:

the slight delay is due to the fact that we have our Australian Championships from 11-19 March [1989] and our office resources are slightly stretched at the moment.

The Committee intends to continue its investigations into this matter in the course of its continuing inquiry.

7.106 The Committee notes that had the AAU itself conducted a satisfactory investigation into this matter it may not have been necessary to publish this account of the event.

(Interim Report, pp. 363-65)

2.20 Since publication of the Interim Report, Mr Rice has claimed:

I am surprised that Jane Flemming, Merv Kemp and Craig Hilliard have admitted that Jane produced a urine specimen at Belfast. When I interviewed Jane at A.I.S. she informed me that she had not done so. For this reason I took no action against her, allowing A.A.U. to continue its enquiry.

(Letter to Committee Secretary, 10 October 1989)

2.21 For present consideration, perhaps the most relevant part of the Interim Report conclusions with regard to Jane Flemming is the last sentence of paragraph 7.102:

In the Committee's view, Ms Flemming is liable for disciplinary action by both the Australian Institute of Sport and the Australian Athletic Union.

Action by the Australian Institute of Sport

2.22 Mr Perry Crosswhite, acting Chief Executive of the AIS appeared before Senate Estimates Committee D on 28 September 1989. He advised that a report had been provided to the Minister from the Australian Sports Commission (ASC) concerning the conclusions of the Interim Report. Mr Crosswhite confirmed that the report stated:

The Chairman reported that he and the Deputy Chairman travelled to Canberra on 5 July 1989 for the purpose of interviewing a number of employees at the Institute of Sport who gave evidence at the Senate inquiry and all of whom were mentioned in the Interim Report of the Senate Standing Committee.

The Chairman and Deputy Chairman reported on their interviews and made certain recommendations arising from which it was resolved that:

1. Conditions of the AIS scholarships be amended to empower the Executive Director to order blood tests of athletes;
2. All AIS coaches be educated on drug use;
3. The responsibility of coaches, medicos, et cetera, to inform on athletes taking drugs be spelled out to all AIS coaches and athletes;
4. The ASC ensures that Australian Athletics further investigate Mr Maurie Plant's actions in the urine substitution involving Jane Flemming;
5. A letter be sent to Jane Flemming informing her that the Board of the ASC strongly

disapproves of her participation in the urine substitution.

(Senate Hansard D9, 28 September 1989)

Mr Crosswhite advised that the letter mentioned in paragraph 5 of the report had in fact been sent to Ms Flemming; he stated that it was an official censure. (Senate Hansard D10, 28 September 1989) Subsequently, the Department of the Arts, Sport, the Environment, Tourism and Territories advised Senate Estimates Committee D that, contrary to the advice of Mr Crosswhite, the letter to Ms Flemming was not sent from the ASC Chairman until 12 October 1989. In that letter, the Chairman advised Ms Flemming:

The Commission of the Australian Sports Commission met on 13 July and considered the Senate Committee's Interim Report and a report arising from our meeting on 5 July. I now write to inform you that the Commission confirms Mr Coates and my disapproval of your participation in the urine substitution incident and views the matter with concern. Had it not been that you were young at the time, on your first major trip as a member of the Australian Commonwealth Games Team and following the instructions of your Assistant Manager, we would have terminated your scholarship. If there is ever any repetition or other breach of our doping policy you can expect instant dismissal.

2.23 The IOC List of Doping Classes and Methods states:

The IOC Medical Commission bans the use of substances and of methods which alter the integrity and validity of urine samples used in doping controls. Examples of banned methods are ... urine substitution ...

The IOC, then, bans attempts to corrupt drug tests. Having regard to that, the Committee considers that the response of the ASC to the Jane Flemming incident is inadequate. Further, the Committee takes the view that athletes, having sought to cheat on a drug test, ought not to receive public funds for the duration of any resultant suspension. If the IOC policy had been followed, Ms Flemming would have been suspended from competition and from the AIS for two years. As was noted in the Interim Report (Interim

Report, p. 363), the former Chief Executive of the AIS, Ron Harvey, advised the Committee that an athlete involved in an attempt to corrupt a drug test should be sacked.

2.24 The Committee notes that the Minister was informed that the ASC had resolved that:

All AIS athletes and coaches be informed that participation in urine substitution now constitutes a breach of the ASC-AIS Drug Policy, introduced in November 1987, and would render any athlete or official involved liable to life penalty thereunder.

(Senate Hansard D9, 28 September 1989)

In addition to reviewing its response to Ms Flemming about this incident, the AIS should review the roles of a number of AIS coaches and officials involved in the incident; they are Messrs Bowman, Kemp, Hilliard and Rice. The Interim Report concluded about these officials that they made no formal report on the incident to the AIS. (Interim Report, p. 363) The AIS review should also recognise that Mr Rice has informed the Committee that Ms Flemming told him she did not provide a urine sample (Letter to Committee Secretary, 10 October 1989) and that this is in conflict with evidence from Ms Flemming. (In Camera Evidence, p. 275)

Action by the Australian Athletic Union

2.25 The IOC Charter Against Doping in Sport (at A III 15) states:

Sports organisations should always investigate how the athlete concerned breached the regulations, and consistent penalties should be applied to all those implicated, including coaches, managers, officials, medical personnel etc.

And as has already been noted, the Australian Sports Commission (ASC) has reported to the Minister that it was resolved:

The ASC ensures that Australian Athletics further investigate Mr Maurie Plant's actions in the urine substitution involving Jane Flemming.

(Senate Hansard D9, 28 September 1989)

2.26 The Committee understands that Athletics Australia (formerly the Australian Athletic Union) has now taken action against Mr Plant. The Committee has received a copy of a letter dated 12 March 1990 from Athletics Australia to the Chairman of the Australian Sports Commission. The letter advises:

Mr Plant acknowledged a potential error of judgement, and it has been agreed that he will not be considered for any further managerial positions with Australian Athletic Teams.

This recognition by Mr Plant of a 'potential' error of judgement does not, in the Committee's view, fully reflect the facts of Mr Plant's involvement nor the seriousness of it.

2.27 The Committee considers that Ms Flemming also ought to have been investigated by Athletics Australia and, if found to have breached the IOC Charter, the standard penalty should have applied. This would have been consistent with the conclusion drawn at paragraph 7.102 of the Interim Report. The Committee believes it is important that action should be seen to be taken to discourage cynicism or corruption amongst athletes, coaches and officials.

Mr Peter Bowman

2.28 Mr Bowman was Company Secretary of the AIS. The Interim Report investigated Mr Bowman's purchase approval practices and advised:

9.97 The Committee obtained relevant order forms for the medical supply purchases referred to by Price Waterhouse. Three of the four orders related to orders for protein supplements, vitamin vials, syringes and a range of vitamins by Mr Lyn Jones. Mr Bowman approved these purchases, with no apparent

reference to a doctor, in apparent contradiction of the policy he had brought in only a matter of a few months previously. In evidence, Mr Bowman could not remember why he had approved these purchases ...

Peter Bowman has displayed a disregard for the proper public accountability for the expenditure of public monies inconsistent with his former position as Company Secretary and Administrator of the AIS. (Interim Report, pp. 410, 412)

The Report subsequently provided Recommendation Twelve:

The Committee recommends that the AIS investigate the approval of medical supply purchases without medical officer authorisation, contrary to AIS policy, with a view to disciplinary action.

2.29 In appearing before Senate Estimates Committee D on 28 September 1989, the AIS acting Chief Executive advised that the Sports Commission report to the Minister referred to Recommendation Twelve as follows:

In respect of recommendation 12 of the Senate Committee's Report, the Commission accepted the recommendation of the Chairman and the Deputy Chairman that disciplinary action was inappropriate in respect of the approval by the then AIS Ltd's company secretary of four medical purchases between January 1981 and December 1983 without medical officer authorisation which was contrary to the AIS policy he had introduced. (Senate Hansard, D9, 28 September 1989)

2.30 The Committee acknowledges that the AIS has complied formally with the terms of Recommendation Twelve of the Interim Report. Nevertheless, the Committee continues to hold the judgement expressed in para. 9.104 of the Interim Report to the effect that Mr Bowman performed his role in a manner inconsistent with the expected standards of Company Secretary and Administrator of the AIS. The Committee finds it difficult to believe that the actions of Mr Jones and Mr Wardle could have taken place without some degree of acquiescence or co-operation by senior administrators, and in particular, Mr Bowman. This is

the relevance of Mr Bowman's failure to follow his own stated procedures. For this reason the Committee cannot accept that the twelfth recommendation of the Interim Report has received an adequate response. The examination of Mr Bowman's role should have been substantive; the Committee is not satisfied that Mr Bowman's performance was adequately scrutinised.

Lack of Response

2.31 Conclusions were drawn in the Interim Report about the head weightlifting coach at the AIS, Mr Lyn Jones, and his assistant, Mr Harry Wardle. The conclusions were clear and particularly serious. Nevertheless they have yet to receive a response from the appropriate authorities.

Mr Lyn Jones

2.32 The conclusions about Mr Jones were as follows:

6.270 The contradictions and inconsistencies running throughout Mr Jones' evidence make it clear that he has been less than truthful, and the Committee has considerable doubts about the veracity of his evidence on many important points. Where evidence given by Mr Jones is contradicted by other evidence the Committee has generally had no hesitation in rejecting Mr Jones' evidence.

6.271 There is no doubt in the Committee's view, that Mr Jones is much more knowledgeable about banned substances and their side effects, than he was prepared to admit to the Committee. In fact the Committee believes that the low level of knowledge that Mr Jones claimed would have made him unsuitable for the positions he has held in weightlifting in Australia and overseas.

6.272 By his own admission Mr Jones had certain evidence that at least one of his weightlifters (Mr Hambesis) was taking banned drugs and that two others (Mr Clark and Mr Byrnes) may have been purchasing banned drugs overseas. However he took no action to inform the relevant authorities or to further investigate these matters, despite his clear responsibilities in this area.

6.273 The Committee accepts the evidence that Mr Jones supplied and administered anabolic steroids and other banned substances to athletes at the Australian Institute of Sport and believes that these drugs could have been purchased using public funds, as discussed in Chapter Nine.

6.274 The Committee believes it is possible that Mr Jones has imported banned substances into Australia and that he has used members of his weightlifting squad to assist him in doing this.

6.275 The Committee also believes that Mr Jones used his involvement in the setting up of the Brisbane drug testing laboratory to gain knowledge useful in identifying the technical limitations of the laboratory and the procedures that would be necessary to ensure that athletes taking banned substances would not test positive. (Interim Report, p. 325)

2.33 While Mr Jones did not apply for a further term as head weightlifting coach of the AIS and is no longer employed there, the Committee considers that a number of steps ought to have been taken by relevant authorities following on the judgements of the Interim Report about Lyn Jones. The Committee's conviction is that action ought to have been taken on two levels. First, the Australian Weightlifting Federation (AWF) ought to have conducted its own investigation of the matter. Second, following that investigation, the AWF ought to have reported the matter (and the substance of its conclusions) to the International Weightlifting Federation (IWF) for its consideration.

2.34 The Committee has established that the approach taken by the AWF to Mr Lyn Jones and the conclusions of the Interim Report is reprehensible. This judgement has been drawn on the following grounds.

2.35 First, Mr Lyn Jones did not appear before the Committee to provide evidence until Wednesday, 14 December 1988. Yet, at the Annual General Meeting of the AWF held on Saturday 10 December 1988, the AWF passed a resolution pre-emptive of hearings to be held about the AIS, weightlifting in Australia,

and drug-taking. The minutes of the AWF Annual General Meeting of 10 December 1988 record that a motion was passed unanimously declaring 'total confidence in the integrity and the record of Federation officials, the weightlifting coaches of the AIS and the weightlifting coaches of NSW and Victoria'. The AWF, then, before any officials appeared at the inquiry, showed that it had prejudged the matters to be reviewed. It did not present itself as an authority capable of objective investigation of whatever conclusions were reached by the Committee about Australian weightlifting. This matter is further mentioned at Chapter Six of this Report.

2.36 Second, the AWF made no attempt to investigate the findings of the Interim Report. When asked about this matter Mr Sam Coffa stated:

If you are talking about what action we might have taken on Lyn Jones, there was none. It is out of our jurisdiction ... It is still my opinion, whilst I applaud what you have said, and so on, and basically my reading that it is a matter of innuendoes, hearsay and unsubstantiated facts ... If the International Weightlifting Federation sees fit not to do anything about it, then that is good enough for me.

... For the rest of it, I really am not learned enough to suggest whether or not you have come to the right conclusions. That is an opinion which I will keep to myself.
(Evidence, pp. 3421-3422)

2.37 Third, despite making the assertion 'If the International Weightlifting Federation sees fit not to do anything about it, then that is good enough for me', the AWF President had not referred the matter to the IWF. The Committee sought to establish what would be the appropriate avenues by which the AWF would refer such a matter to the IWF; in February 1990 letters posing that question were sent to the IWF (Dr Tamas Ajan) and the AWF (Mr Sam Coffa and Dr David Kennedy).

2.38 Dr Kennedy responded by confirming that:

- . since the tabling of the Interim Report in June 1989, there had been only one meeting of the IWF Medical Committee (Athens, September 1989);
- . due to work commitments Dr Kennedy had been unable to attend that meeting; and
- . in any event, Dr Kennedy did not believe it appropriate that such matters be raised with the IWF Medical Committee: where appropriate they should be raised with the Executive Board. (Letter to Committee Secretary, 22 February 1990)

2.39 The Committee has two comments on Dr Kennedy's opinion. First, it considers that the matters discussed in the Interim Report are appropriate for consideration at the IWF Executive Board. Nevertheless, given that the issues centre on sports drugs, it would also have been appropriate for Dr Kennedy to have raised the matter with the Medical Committee. Second, to do so, Dr Kennedy did not have to attend a meeting. When the Interim Report was tabled in June 1989, Dr Kennedy could have advised the IWF of its publication and provided a copy of the report by mail. This Committee is of the firm view that such a course of action was incumbent on Dr Kennedy.

2.40 Mr Sam Coffa responded in the following terms to the Committee's request that he provide further comment on this matter:

Your letter of February 19th, 1990 relating to the Interim Report on Drugs in Sport tabled by the Committee and the conclusions about Mr Lyn Jones, I have read these conclusions and as I stated at the hearing in Melbourne on November 16th, 1989, no action has been taken by the A.W.F. as in my submission this matter is outside of our jurisdiction.

The A.W.F. could not agree nor disagree with the conclusions reached by the Committee as we were not privy to 'in camera' submissions nor have we been presented with facts and findings which could stand up to cross examination

and/or scrutiny outside the bounds of Parliamentary Privileges and as such we could be exposed to the risk of expensive and complicated litigations if we took steps to call into question the membership of Mr Lyn Jones of the A.W.F. or indeed to have him removed from membership of the Executive Board of the I.W.F.

My understanding is that this matter was raised at the recent I.W.F. Executive Board meeting held in Melbourne during March 6th-8th, 1990 and I expect the General Secretary, Dr Tamas Ajan, will communicate with you in due course. (Letter to Committee Secretary, 19 March 1990)

2.41 At the time that this Report was approved by the Committee, only an interim response had been received from Dr Tamas Ajan on this issue. Dr Ajan confirmed that the IWF Executive Board would 'elaborate a standpoint' and advise the Committee. (Letter to Committee Secretary, 21 March 1990)

Mr Harry Wardle

2.42 The Interim Report reached the following conclusion about Mr Wardle:

6.276 In reaching these conclusions concerning Mr Lyn Jones, the Committee believes that it is necessary to recognise that these activities of Mr Jones could not have been carried out without the full knowledge and co-operation of Mr Harry Wardle, the assistant coach in weightlifting. Mr Wardle's evidence to the Committee was itself contradictory and inconsistent with evidence he had earlier presented to the AIS solicitors, and the Committee believes that Mr Wardle must accept some of the responsibility for the situation that existed in the weightlifting squad of the AIS. (Interim Report, p. 326)

2.43 As with Mr Jones, the AWF took no action on this conclusion concerning Mr Wardle. Further, the AIS took no action against Mr Wardle; he remains on the staff of the AIS. (Senate Hansard D12, D13, 28 September 1989)

2.44 The Committee considers that the AIS and the ASC need to reconsider their response to the conclusion of the Interim Report concerning Mr Wardle. The Committee takes the view that its responsibility is to safeguard the health of Australian athletes including those at the AIS. On the evidence available to the Committee, Mr Wardle's continuing employment at the AIS and his role in the AWF is inconsistent both with those objectives and the need to protect the disbursement of public funds.

FOCUS OF SECOND REPORT

Background

2.45 It has been noted already in Chapter One that this Report extends the focus adopted for the Interim Report. Whereas the Interim Report concentrated on the Australian Institute of Sport, the Committee has since turned its attention to the wider sports environment. In examining the sports drug threat to 'professional' sports, Olympic sports and other activities such as bodybuilding, this Report reviews the range of sports activities currently most vulnerable to the performance drug problem.

The Report's Goals

2.46 The Committee's inquiry necessarily has included close examination of a range of individuals who, in numerous ways, have been implicated in performance drug incidents. These persons range from elite athletes to coaches, administrators, doctors, pharmacists and veterinarians. While the inquiry examined some individuals quite closely (and there is a number of specific recommendations in this Report with respect to them), the Committee has consistently had in mind a much broader picture in its investigations. That is, the Committee has been concerned to develop relevant public policy that will adequately meet the threat of sports drug abuse in Australia and protect the health of those currently at risk. The Committee wishes to see a new climate emerging that will significantly constrain the black

market in performance drugs and encourage a culture of drug avoidance among athletes. The principle involved is the need to reduce supply and demand simultaneously so that neither new consumption nor new sources of supply emerge. The recommendations in this Report emanate from that perspective.

Progress Towards the Goals

2.47 Steps towards constraining the black market in sports drugs were initiated in the Interim Report and are carried further in Chapter Twelve of this Report. The Committee is concerned to limit the availability of anabolic steroids manufactured for human use; this can be achieved by rescheduling such drugs from Schedule 4 to Schedule 8. Further, the Committee considers that it is possible to limit significantly the availability of veterinary anabolic steroids; this can be achieved by both rescheduling and the promulgation of tighter regulations concerning the human use of veterinary drugs. Finally, the importation of anabolic steroids is now significantly constrained consistent with recommendations Six and Eight of the Interim Report. These issues are all examined in Chapter Twelve of this Report.

2.48 With regard to the development of a drug-avoidance culture amongst Australian athletes, much has been achieved already as a consequence of the Interim Report. The establishment of the Australian Sports Drug Agency (ASDA) within three months of the tabling of the Interim Report set on course a significant train of events towards that goal. The work of the Committee for this Second Report has encouraged the development of drug testing regimes by the 'professional' sporting codes; these regimes will operate in co-operation with ASDA. The drug regimes for a number of 'professional' sports are reviewed and discussed in Chapter Five of this Report.

2.49 While the establishment of drug regimes in both 'professional' and amateur sports has been a positive development, the Committee's investigations for the Second Report

have revealed the need for the monitoring of the authorities that administer sports, both 'professional' and amateur. In the course of the inquiry the Committee heard evidence in camera of a senior official of a 'professional' sport who would have been involved in administering that sport's drug regime but whose own position with regard to sports drugs was compromised. Similarly, with the sport of weightlifting, Chapters Six and Seven of this Report describe the inadequate performance of the Australian Weightlifting Federation (AWF) with regard to investigating the occurrence of a positive test and to examining the circumstances surrounding numerous occasions where athletes failed to test when required.

The Australian Sports Drug Tribunal

2.50 In the Interim Report the Committee was concerned to protect the rights of athletes by providing for an appeals Tribunal to hear disputes about drug tests. That was the rationale for Recommendation Four (ii) and (v). In the course of examining the activities of the AWF, it has become clear that the Committee's other concern leading to Recommendation Four (ii) of the Interim Report requires further emphasis. That concern was that it could be necessary from time to time to ensure that administering authorities of the various sports do not neglect their responsibilities with regard to drug testing matters. More seriously, it may be necessary to ensure that such authorities do not deliberately subvert their own drug testing regimes and the independent drug testing carried out on their behalf. (The Committee notes that sports officials are often coaches of elite athletes in those sports.) For these reasons, the Committee considers that the Tribunal advocated in Recommendation Four (ii) of the Interim Report should become operative as a matter of urgency. The Committee now notes, however, that the individuals comprising the now redundant Australian Commonwealth Games Appeals Tribunal and nominated for the Interim Tribunal at Recommendation Four (v) are not necessarily still advocated or available. Persons appointed to the Tribunal ought not to be members of the Australian Sports Commission. Nor should they be

involved in any way with sport e.g. through administration, coaching, sports medicine, selection or sponsorship etc. The Committee believes that the members of the Tribunal should be chosen by the Minister, taking into consideration proposals from the Implementation Unit (see Recommendation One of this Report).

2.51 It is necessary in the light of evidence before the Committee to now specify the essential ways in which the Committee envisages that the Tribunal would operate as a means of overseeing the processes of sports drug testing for Australian athletes.

2.52 First, the Tribunal would be able to receive appeals from ASDA, the sporting federations and individual athletes. Appellants of each kind would be able to complain of the ways in which any athlete was treated by sports federations (for example, the Australian Weightlifting Federation), peak sports councils (for example, the Commonwealth Games Association), and Australian authorities (such as ASDA). It should be noted that these organisations are not appropriate authorities for dealing with disputes about drug incidents; objectivity is essential. Numerous incidents justifying an independent appeal mechanism have been brought to the Committee's attention. In particular, the actions of the Australian Weightlifting Federation concerning Mr Satry Ma and Mr Michael Brittain demonstrate that requirement; these matters are discussed in Chapter Seven of this Report.

2.53 Second, appeals could be based on a range of matters. They would include:

- . whether the correct test protocol was followed;
- . whether there were any irregularities in a test;
- . whether the correct penalty was applied;
- . whether extenuating circumstances were properly considered; and
- . whether an investigation of a drug-test incident was justified.

2.54 The Committee believes that the Tribunal should have powers approximating those of a Senate Committee to ensure that it can collect evidence, protect witnesses and inform the public.

2.55 Importantly, appeals could be placed before the Tribunal to the effect that a sports federation had not held a proper investigation or imposed a proper penalty in any drug incident. The need for this is significant in the light of the Committee's findings about Australian weightlifting (see Chapters Six and Seven of this Report). The Committee is therefore critical of part of the response of the Australian Sports Commission to the Interim Report's recommendation for a Tribunal. That response, which the Committee rejects, was:

The Commission disagreed with the Senate Committee's Report that any such Tribunal should adjudicate on the penalties imposed by sporting federations on athletes testing positive for banned substances or that it should hear appeals from the sporting federations and individual athletes in relation to decisions made in Australia as a result of tests carried out in Australia and internationally. (Senate Hansard D9, 28 September 1989)

2.56 The Committee has formed the view that it would be difficult for the Australian Sports Commission to fulfil an impartial appeals function because its current board members are heavily involved in various aspects of sport, including administration and sponsorship. The Committee also believes that while appeal mechanisms are available to parties affected by decisions under Commonwealth legislation these mechanisms do not provide a basis for wide inquiries into underlying administrative issues or the broad range of matters envisaged in the Committee's recommendations.

2.57 In order to act as a fail-safe mechanism for Australian drug testing, then, as a matter of course the Tribunal would be advised by ASDA of:

- . all positive drug tests; and
- . all occasions where an athlete to be tested failed to provide a sample, and was 'deemed' positive.

The Tribunal could then monitor the activities of the relevant sports administration authorities to check that proper investigations were carried out and correct penalties imposed.

2.58 An example may be useful here to demonstrate the need for the fail-safe system that would be provided by the Tribunal, and to describe the way in which it would operate; the circumstances surrounding the case of Darren Walker are illustrative (and are more fully discussed in Chapter Seven of this Report).

2.59 In November 1989, Mr Darren Walker was the subject of an allegation that he was using banned sports drugs. The ASDA subsequently targeted him for a test, but he did not attend - he had left his normal home in Melbourne. Mr Walker could not be contacted and tested until sufficient clearance time had elapsed for most banned drugs to have cleared his system. With the Tribunal operating, a case like this would entail ASDA informing the relevant authorities that the athlete had not provided a sample; those authorities are ASC, AOF, AWF and the Australian Commonwealth Games Association. Under the proposed ASDA legislation, ASDA would have registered the athlete as positive. The AWF and/or the athlete could then make an appeal to the Tribunal for the penalty to be amended. The Tribunal would investigate and issue a finding whether or not it confirmed the ASDA declaration. Such a system provides for the efficient imposition of penalties while allowing adequate scope for preserving the rights of individual athletes. Differing treatment of similar cases would be unlikely. (Chapter Seven of this Report notes the AWF's inconsistent handling of two lifters who failed to test - Mr Brittain and Mr Walker.)

2.60 Importantly, upon registering a certain number of positive tests for a particular sport (say, three in any continuous twelve month period), the Tribunal would be empowered to conduct an inquiry and to inform Federal and State Governments:

- . that the positives (and deemed positives) had been recorded; and
- . that funding should cease (for, say, twelve months).

In addition, the Tribunal would inform the Australian Sports Commission, the Australian Olympic Federation and the Commonwealth Games Association that they should consider derecognition of that sport for, say, twelve months. Derecognition could entail loss of access to some sporting venues and loss of some funding. Where derecognition occurred in an Olympic or Commonwealth Games year, that sport would not be eligible to be part of the Australian team.

RECOMMENDATIONS

Recommendation Two

2.61 That, where necessary, sports organisations confirm that attempts to corrupt drug tests will receive appropriate disciplinary responses. In particular, with regard to Jane Flemming's part in an attempt to corrupt a drug test in 1986, that:

- . Athletics Australia conduct an inquiry with a view to making clear to athletes the seriousness of any attempt to corrupt a drug test; and
- . the Australian Sports Commission reconsider its response to the incident and ensure that Athletics Australia carries out a proper investigation consistent with the IOC Charter Against Doping in Sport.

Recommendation Three

2.62 That, with regard to Recommendation Twelve of the Interim Report concerning Mr Peter Bowman's professional behaviour as Company Secretary of the AIS, the Australian Institute of Sport reconsider its conclusions regarding disciplinary action, taking into account evidence presented to the inquiry. The role of Messrs Jones and Wardle also should be examined.

Recommendation Four

2.63 That the Sports Drug Commission and the Australian Sports Drug Tribunal, first advocated in Recommendation Four (ii) of the Interim Report, become operative as a matter of urgency.

The Tribunal will:

- . have authority to investigate all sports drug matters;
- . have access to all evidence presented to the Senate Drugs in Sport inquiry, both public and in camera;
- . receive appeals concerning any aspect of drug testing in sports;
- . conduct investigations into appeals;
- . receive advice from ASDA of all positive tests and all occasions where a sample was not provided as required or where an attempt was made to corrupt a test;
- . ensure proper investigations of all positives (and failures to provide samples) are carried out by the relevant sports administrations;
- . report to the Minister for the Arts, Sport, the Environment, Tourism and Territories the substance of all its investigations and findings upon completion of each inquiry, and subsequently to the Parliament through the ASDA Annual Report; and

- . monitor investigations carried out by sporting bodies as the result of recommendations in the Committee's Interim and Second Reports and report on these to the Minister.

Where a particular sport experiences three or more drug test positives in any twelve month period, the Australian Sports Drug Tribunal should investigate the sport and if it determines that the relevant sporting organisation is culpable then it may:

- . advise all Federal and State (and Territory) Governments that the positives had been recorded;
- . advocate that public funding of any activities of that sport be suspended for twelve months; and
- . inform the Australian Olympic Federation and the Commonwealth Games Association that derecognition of that sport for twelve months should be considered.

For the Drug Free Powerlifting Association (DFPLA), however, positive tests on lifters admitted to the DFPLA on the direction of the Tribunal should not be included for the purpose of this recommendation.

Recommendation Five

2.64 That the Australian Sports Drug Tribunal:

- . advise the international controlling body of the relevant sport of those cases where consideration should be given to appropriate disciplinary action by the controlling body; and
- . ensure that Australian drug testing practices observe the requirements of international drug testing agreements to which Australia is a party.

