

EXPLANATORY STATEMENT 7 of 2008

AMENDMENT, ADOPTED 17 NOVEMBER 2008, TO ANNEX II OF THE UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANISATION (UNESCO) INTERNATIONAL CONVENTION AGAINST DOPING IN SPORT OF 19 OCTOBER 2005

Practical and legal effect

1. The proposed treaty matter amends Annex II to the UNESCO *International Convention Against Doping In Sport* [2008] ATS 10 (the Convention). Annex II is the Standard for Granting Therapeutic Use Exemptions (SGTUE). The main purpose of the SGTUE is to ensure that the process for granting Therapeutic Use Exemptions (TUEs) is harmonised across sports and countries. A TUE grants an athlete permission to use for therapeutic purposes a substance or method that might otherwise be prohibited in sport. Compliance with this document is mandatory. Within the Australian context, the Australian Sports Drug Medical Advisory Committee (ASDMAC) must apply the SGTUE for all applications for TUEs that it considers.

Nature and timing of proposed treaty matter

2. The SGTUE in Annex II is an integral part of the Convention. It is based on the World Anti-Doping Agency (WADA) International Standards for Therapeutic Use Exemptions (ISTUE). Article 34 of the Convention sets out an expedited mechanism for amending its annexes. Pursuant to this mechanism, following WADA's amendment of its ISTUE the UNESCO Director-General notified States Parties to the Convention, on 3 October 2008, of the proposed amendments to the SGTUE in Annex II to reflect the changes made by WADA.

3. Article 34(2) of the Convention provides Parties with 45 days from the Director-General's notification to object to the proposed amendments. Australia did not express an objection. The proposed amendments were deemed approved by the Parties on 17 November 2008. The amendments will enter into force a further 45 days after the Director-General notifies Parties of their approval, in accordance with Article 34(3) of the Convention.

Reasons for Australia to take the proposed action relating to the treaty matter

4. Australia's anti-doping efforts take place in a global environment. Pivotal to this is the harmonisation across all sports and countries of specific technical and operational aspects of anti-doping measures. In reviewing the International Standard, WADA consulted with stakeholders, including the Australian Sports Anti-Doping Authority (ASADA) and ASDMAC prior to the final ISTUE being issued to the WADA Foundation Board for approval in May 2008. ASADA and ASDMAC were broadly supportive of the principles of the revised WADA ISTUE, noting that clarification was required on certain operational aspects.

5. It is in Australia's interest that the Annex to the Convention reflects the most recent ISTUE issued by WADA. This will enable ASDMAC to process TUEs under the new WADA requirements, and to have Australian TUEs recognised internationally.

Implementing legislation

6. Compliance with the Convention does not require further legislative amendment.