



Measure 1 (2005) Annex VI to the Protocol on Environmental Protection to the Antarctic Treaty: Liability arising from environmental emergencies (Stockholm, 17 June 2005)

Measure 4 (2004) Insurance and contingency planning for tourism and non-governmental activities in the Antarctic Treaty area (Cape Town, 4 June 2004)

Measure 15 (2009) Landing of persons from passenger vessels in the Antarctic Treaty area (Baltimore, 17 April 2009)

Introduction

- 2.1 On 5 July 2011, *Measure 1 (2005) Annex VI to the Protocol on Environmental Protection to the Antarctic Treaty: Liability arising from environmental emergencies* (Stockholm, 17 June 2005); *Measure 4 (2004) Insurance and contingency planning for tourism and non-governmental activities in the Antarctic Treaty area* (Cape Town, 4 June 2004); and *Measure 15 (2009)*

Landing of persons from passenger vessels in the Antarctic Treaty area (Baltimore, 17 April 2009) were tabled in the Commonwealth Parliament.

- 2.2 This series of amendments reflects changes to the administration of the Antarctic and its environment. All three measures apply to the 1961 Antarctic Treaty and were adopted unanimously by the Consultative Parties at the 27th, 28th and 32nd Antarctic Treaty Consultative Meetings (ATCM).¹
- 2.3 Australia has been a Consultative Party to the Treaty since it came into force on 23 June 1961. Twelve countries were original signatories to the Antarctic Treaty in 1959. Of these, seven claim territory in Antarctica. Thirty-six other countries have now become Parties to the Treaty by acceding, for a total of 47 Parties.²
- 2.4 Consultative Parties are those Parties entitled to participate in Antarctic Treaty Consultative Meetings. These are the original 12 signatories to the Antarctic Treaty, and those that demonstrate their interest in Antarctica by 'conducting substantial research activity there'. Sixteen of the acceding countries have had their activities in Antarctica recognised according to this provision, and consequently there are 28 Consultative Parties as of April 2011. The other 20 Non-Consultative Parties are invited to attend the Consultative Meetings but do not participate in the decision-making.³
- 2.5 The Treaty is a multilateral agreement that:
- requires the Contracting Parties to ensure that Antarctica is used exclusively for peaceful purposes;
 - guarantees freedom of scientific research;
 - promotes international scientific cooperation;
 - allows for the inspection of facilities between Contracting Parties;

1 National Interest Analysis [2011] ATNIA 13 with attachment on consultation *Measure 1 (2005) Annex VI to the Protocol on Environmental Protection to the Antarctic Treaty: Liability arising from environmental emergencies* (Stockholm, 17 June 2005), [2011] ATNIF 7; National Interest Analysis [2011] ATNIA 14 with attachment on consultation *Measure 4 (2004) Insurance and contingency planning for tourism and non-governmental activities in the Antarctic Treaty area* (Cape Town, 4 June 2004) [2011] ATNIF 8; National Interest Analysis [2011] ATNIA 15 with attachment on consultation *Measure 15 (2009) Landing of persons from passenger vessels in the Antarctic Treaty area* (Baltimore, 17 April 2009) [2011] ATNIF 9; para 1. (Hereafter referred to as 'NIA' 'Measure 1', 'Measure 4 and/or 'Measure 15')

2 'Australian Antarctic Division: Treaty Partners', <<http://www.antarctica.gov.au/antarctic-law-and-treaty/treaty-partners>>, accessed 13 September 2011.

3 'Australian Antarctic Division: Treaty Partners', <<http://www.antarctica.gov.au/antarctic-law-and-treaty/treaty-partners>>, accessed 13 September 2011.

- sets aside the question of territorial sovereignty in Antarctica; and
 - provides for regular meetings between the Contracting Parties.⁴
- 2.6 A large proportion of Antarctica is within Australia's jurisdiction. Australia also has an extensive research program in the Antarctic. Australia took a leading role in the formation of the Treaty, and successive Australian governments have viewed the implementation of the Treaty and associated agreements as a high priority. Australia is a strong advocate for the Treaty and has actively contributed to the development of the additional instruments in the Treaty system, including the *Protocol on Environmental Protection to the Antarctic Treaty* (1998).⁵
- 2.7 Government and non-government activities in Antarctica have increased markedly over the past three decades.⁶ For example, the number of passengers landing by vessel in Antarctica increased from 6,704 in 1992-93 to 32,637 in 2007-08. The number of cruise-only vessel passengers increased from 936 in 1999-00 to 15,026 in 2009-10.⁷ Activities posing the greatest risk to the Antarctic environment include the operation and resupply of national Antarctic program stations and the operation of vessels.⁸ The Committee also notes the pressure imposed on the Antarctic environment by increased tourist visitor numbers.

Aim of the treaties

Measure 1

- 2.8 The costs associated with a response to an environmental emergency in the Antarctic are likely to be significant given the region's distance from ports and response facilities and difficult operating conditions.
- 2.9 As a result, Antarctic Treaty Consultative Parties (ATCP) agreed that in order to minimise risk to the Antarctic environment, government and non-government operators alike must be obliged to:
- undertake reasonable preventative measures;
 - establish contingency plans;

4 NIA Measure 1, Measure 4 and Measure 15, para 6.

5 NIA Measure 1, Measure 4 and Measure 15, para 7.

6 Regulation Impact Statement (RIS), Measure 1, para. 1.8.

7 RIS, Measure 15, paras. 1.3 & 1.4.

8 RIS, Measure 1, para. 1.8.

- undertake prompt and effective response action to environmental emergencies they cause; and
- compensate a Party that responds to an environmental emergency in its stead.⁹

Measure 4

2.10 ATCPs agree that all operators planning to conduct activities in the Antarctic must recognise and prepare adequately for the inherent dangers associated with operations conducted in such an inhospitable and isolated environment. The following aspects are of particular relevance:

- the health and safety of individuals participating in activities;
- the health and safety of rescuers and integrity of equipment used to undertake search and rescue operations in the Antarctic;
- the significant costs associated with the conduct of search and rescue, and medical care and evacuation operations in the Antarctic;
- the potential for disruption to national Antarctic programs (particularly scientific research activities) due to unplanned diversions of critical and limited resources to conduct search and rescue, medical care and evacuation operations; and
- the lack of a right to compensation for costs under existing arrangements where ATCPs provide assistance to vessels and aircraft in distress.¹⁰

2.11 In addition, contingency plans and arrangements must be in place prior to activities commencing and such plans cannot be reliant upon support from other operators or national programs unless prior agreement has been reached.¹¹

2.12 Prior to the introduction of Measure 4, a non-obligatory system of self-regulation had been in place. In 1994, the 18th ATCM adopted a non-obligatory *Recommendation XVIII-1 Tourism and non-governmental activities* that recommends operators:

- ensure that activities are self-sufficient and do not require assistance from ATCPs unless such arrangements for assistance have been agreed in advance;

9 RIS, Measure 1, paras. 1.8 & 1.9.

10 RIS, Measure 4, para. 1.5.

11 NIA Measure 4, para. 10.

- provide information to assist in the preparation of contingency plans for emergency situations including search and rescue, medical care and evacuation; and
- consider insurance.¹²

2.13 In 2004, the 27th ATCM adopted Resolution 4 (2004) *Guidelines on contingency planning, insurance and other matters for tourist and other non-governmental activities in the Antarctic Treaty area* that recommends operators organising or conducting tourist or other non-governmental activities in the Antarctic:

- ensure that appropriate contingency plans and sufficient arrangements for health and safety, search and rescue, medical care and evacuation have been drawn-up and are in place prior to the start of the activity;
- ensure that such plans and arrangements are not reliant on support from other operators or national Antarctic programs without their express written agreement; and
- ensure that adequate insurance or other arrangements are in place to cover any costs associated with search and rescue, medical care and evacuation.¹³

2.14 Resolution 4 (2004) is intended as an interim arrangement during the implementation period for Measure 4 (2004).¹⁴

Measure 15

2.15 This Measure places restrictions on certain tourist or other non-governmental activities in the Antarctic in the Treaty area. The Contracting Parties are obliged to impose requirements on their authorised operators. The new requirements will mean that, for vessels carrying more than 500 passengers, operators must refrain from making any landings in the Antarctic. For vessels carrying 500 or fewer passengers, operators must:

- coordinate with each other with the objective that no more than one tourist vessel is at any landing site at any one time;
- ensure that no more than 100 passengers are ashore at any one time; and
- maintain a 1:20 guide-to-passenger ratio ashore.¹⁵

12 RIS, Measure 1, para. 1.7.

13 RIS, Measure 1, para. 1.8.

14 RIS, Measure 1, para. 1.9

- 2.16 The Measure also provides that these requirements may be subject to further adjustment by the Consultative Parties at future sessions of the ATCM.¹⁶
- 2.17 This Measure is a recognition by the ATCPs that vessel-borne tourism operations in the Antarctic have expanded markedly over the past two decades. Australians constitute a large proportion of consumers within the Antarctic tourism markets, representing approximately 9 per cent of Antarctic tourists.¹⁷

Australia's interest in accepting the measures

- 2.18 In all three cases, the Australian Government has strategic and policy interests in Antarctica and their implementation would directly contribute to:
- the maintenance of the Antarctic Treaty system and enhancement of Australia's standing and influence within it; and
 - the protection of the Antarctic environment.
- 2.19 Furthermore, Australia must participate proactively within the governance institutions of the Antarctic Treaty system to enhance its influence and advance its Antarctic interests. Because Measures adopted by the ATCM do not enter into force until they are implemented by all ATCPs, taking the necessary domestic actions in a timely manner is crucial to Australia's maintenance of influence within the Antarctic Treaty system.¹⁸

International approval

- 2.20 The Committee notes the status of these agreements. Each Measure will only come into force when all 28 consultative party members have approved them. To date, five have approved Measure 1, ten have approved Measure 4 and only one – Japan – has approved Measure 15.¹⁹

15 NIA Measure 15, para. 9

16 NIA Measure 15, para. 10.

17 RIS, Measure 15, paras. 1.3 & 1.4.

18 RIS, Measure 1, paras. 1.17 & 1.19; RIS, Measure 4, para 1.14 – 1.15, & RIS, Measure 15, para. 4.14.

19 Mr Jonathon Barrington, Senior Policy Officer, Strategic branch, Australian Antarctic Division,

Thus, Australia is not yet bound by any of the amendments, and will only be bound when all other members have approved.

- 2.21 Nonetheless, this does not mean that the members are neglecting their responsibilities. The Department of Sustainability, Environment, Water, Population and Communities explained:

...there is a strong commitment among the parties to see these things move into force. The intention, then, is for each party to take these things forward. Australia is in the leading part of the parties seeking to adopt these measures, but each party, particularly in relation to Measure 1, 2005, looks at its national domestic legislative processes and teases out the aspects of the liability convention in terms of its implementation...

One other thing that I will mention is that, in the margins of the Antarctic Treaty Consultative Meeting, the consultative parties sit down and discuss implementation of measures as a routine matter of business and share information and get an understanding and appreciation of how to implement these. As well, the parties that have implemented these measures have release copies of the legislation they have used, as well as the other materials that support the legislation.²⁰

Costs

- 2.22 There are no foreseeable financial costs to the Commonwealth of Australia associated with compliance with the proposed treaty action.²¹ The Department of Sustainability, Environment, Water, Population and Communities indicated that whatever departmental costs are incurred, they will be within normal operating activities.²² In terms of Measure 1, Australia has in place procedures to promptly and effectively respond to

Department of Sustainability, Environment, Water, Population and Communities, *Committee Hansard*, 22 August 2011, p. 6.

20 Mr Jonathon Barrington, Senior Policy Officer, Strategic branch, Australian Antarctic Division, Department of Sustainability, Environment, Water, Population and Communities, *Committee Hansard*, 22 August 2011, pp. 6-7.

21 NIA, Measure 1, para 12; Measure 14, & 15, para. 15.

22 Mr Jonathon Barrington, Senior Policy Officer, Strategic branch, Australian Antarctic Division, Department of Sustainability, Environment, Water, Population and Communities, *Committee Hansard*, 22 August 2011, p. 8.

environmental emergencies arising from its national program activities in the Antarctic.²³

- 2.23 With respect to the tourist industry, the Department of Sustainability, Environment, Water, Population and Communities also indicated that those tourist operators affected by the amendments were already voluntarily abiding by its provisions and were unlikely to incur further costs when the Measures come into effect.

Tourism operators go to inordinate lengths to maintain the pristine nature of Antarctica. So as an initiative the tourism operators have worked together to form the International Association of Antarctica Tour Operators and through that they have arranged a number of self-regulatory mechanisms that have then moved on to become regulatory mechanisms under the Antarctic Treaty. So in this context measure 4 and measure 15 derive from the work of the tourism industry itself and are moving through a resolution process from applying on a voluntary basis to now a regulatory process where they will apply an obligatory process.²⁴

Conclusion

- 2.24 The Committee recognises the importance of the proposed amendments and supports their approval.
- 2.25 The three separate Measures contribute to the protection of the Antarctic environment and, given Australia's strategic and policy interests in Antarctica, their implementation would directly contribute to the maintenance of the Antarctic Treaty system and enhancement of Australia's standing and influence within it.
- 2.26 The Commonwealth Government is not expected to incur any costs – those costs that are expected will be absorbed within normal operating activities – and tourist and non-government operators are, to a large degree, already applying the necessary measures to their operations.

23 NIA, Measure 1, para. 12.

24 Mr Jonathon Barrington, Senior Policy Officer, Strategic branch, Australian Antarctic Division, Department of Sustainability, Environment, Water, Population and Communities, *Committee Hansard*, 22 August 2011, pp. 7 – 8.

- 2.27 This confluence of interests and circumstances draws the Committee towards the conclusion that these amendments should be supported with binding treaty action.

Recommendation 1

The Committee supports *Measure 1 (2005) Annex VI to the Protocol on Environmental Protection to the Antarctic Treaty: Liability arising from environmental emergencies (Stockholm, 17 June 2005)* and recommends that binding treaty action be taken.

Recommendation 2

The Committee supports *Measure 4 (2004) Insurance and contingency planning for tourism and non-governmental activities in the Antarctic Treaty area (Cape Town, 4 June 2004)* and recommends that binding treaty action be taken.

Recommendation 3

The Committee supports *Measure 15 (2009) Landing of persons from passenger vessels in the Antarctic Treaty area (Baltimore, 17 April 2009)* and recommends that binding treaty action be taken.

