

**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

Regulation Impact Statement

NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

SUMMARY PAGE

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Nature and timing of proposed treaty action

1. The proposed treaty action is the approval of Measure 15 (2009) *Landing of persons from passenger vessels in the Antarctic Treaty area* (the Measure). The Measure was adopted unanimously by the Consultative Parties to the *Antarctic Treaty* [1961] ATS 12 (the Treaty) at the 32nd Antarctic Treaty Consultative Meeting (ATCM) in Baltimore on 17 April 2009.
2. Pursuant to Article IX of the Treaty, Measures for the governance of the Treaty area may be adopted by the representatives of Consultative Parties at the annual ATCM for recommending to their governments.
3. The Measure will enter into force when approved by all Consultative Parties to the Treaty. There are 28 Consultative Parties to the Treaty as at April 2011.
4. The Measure will apply to particular activities in the Treaty area. According to Article VI of the Treaty, the Treaty area is the area south of 60° south latitude.

Overview and national interest summary

5. Implementation of the Measure will enhance the protection of human health and safety, the Antarctic environment and Antarctic heritage, by increasing the regulation of tourism and other non-governmental activities in the Treaty area. The Measure will introduce new requirements relating to the environmental and safety aspects of landings from passenger vessels in the Antarctic. The requirement will make obligatory aspects of the previous voluntary procedures for passenger vessels in the Antarctic. Implementation of the Measure is consistent with Australia's long-standing governance aims for the Antarctic region.

Reasons for Australia to take the Proposed Treaty Action

6. Australia has been a Consultative Party to the Treaty since it came into force in 1961. The Treaty is a multilateral agreement that: (a) requires the Contracting Parties to ensure that Antarctica is used exclusively for peaceful purposes, (b) guarantees freedom of scientific research, (c) promotes international scientific cooperation, (d) allows for the inspection of facilities between Contracting Parties, (e) sets aside the question of territorial sovereignty in Antarctica, and (f) provides for regular meetings between the Contracting Parties.

7. A large proportion of Antarctic territory 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] ATS 6.

8. Implementation of the Measure will enhance the protection of human health and safety, the Antarctic environment and Antarctic heritage. Antarctica is a physically remote, inhospitable, unpredictable and potentially dangerous region, and the Measure has been developed, in part, in response to the increasing trend in Antarctic tourism and potential impacts from such activities on the Antarctic environment including its wildlife, and Antarctic heritage. The Measure also recognises the inherent hazards associated with passenger vessel operations in the Antarctic region and seeks to promote safety of life at sea and to minimise the potential for adverse environmental impacts arising from vessel incidents.

Obligations

9. The Measure obliges the Contracting Parties to impose requirements on their authorised operators that organise or conduct tourist or other non-governmental activities in the Treaty area. 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.

10. The Measure also provides that these requirements may be subject to further adjustment by the Consultative Parties at future sessions of the ATCM.

Implementation

11. Australia's obligations under the Treaty are implemented in domestic law through the *Antarctic Treaty Act 1960* (Cth) and *Antarctic Treaty (Environment Protection) Act 1980* (Cth). These Acts require amendment to implement the obligations under the Measure into Australian domestic law.

Costs

12. There are no foreseeable financial costs to Australia associated with compliance with the proposed treaty action.

Regulation Impact Statement

13. A Regulation Impact Statement is attached.

Future treaty action

14. Article XII(1) of the Treaty provides that the Treaty may be amended by unanimous agreement of the Contracting Parties whose representatives are entitled to participate in the ATCMs. Any such modification or amendment enters into force when the depositary government (the United States of America) has received notice from all such Contracting Parties that they have ratified it.

15. In addition, the Treaty enables Consultative Parties to adopt and amend Measures. Any amendment of the Measure would constitute a separate treaty action and would have to satisfy Australia's domestic treaty making process, including tabling in Parliament and consideration by the Joint Standing Committee on Treaties.

Withdrawal or denunciation

16. If Australia decides not to approve the Measure, the Measure and its obligations on tourism and non-governmental operators will not enter into force for any of the Contracting Parties.

17. Article XII(2) of the Treaty provides that a Contracting Party may withdraw from the Treaty where a modification or amendment to the Treaty has been proposed at a conference to review its operation, but has not entered into force within two years of its adoption (i.e. has not been approved by all relevant Contracting Parties). In such a case, Australia could withdraw from the Treaty by giving notice to the depositary government. Such withdrawal would take effect two years after the notice was received.

18. In accordance with Article 54(b) of the *Vienna Convention on the Law of Treaties* [1974] ATS 2, Australia may withdraw from the Treaty at any time by consent of all the Parties.

19. Withdrawal is a formal treaty action and would be subject to Australia's domestic treaty requirements, including tabling in Parliament with a National Interest Analysis and consideration by the Joint Standing Committee on Treaties.

Contact Details

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ATTACHMENT ON CONSULTATION

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CONSULTATION

State and Territory governments

20. The State and Territory Governments have been consulted through the Commonwealth-State/Territory Standing Committee on Treaties (SCOT). Information on the negotiation of the Measure was provided to State and Territory representatives for consideration at the SCOT meeting in September 2009. The Measure has remained on the Schedule of Treaties since that time. SCOT has not requested further information or provided any comments on the Measure to date.

Public Consultation

21. The Department of Foreign Affairs and Trade convened consultative meetings with the Australian Antarctic tourism industry and non-governmental organisations before the ATCM that adopted the Measure. The views expressed at the meetings were taken into account in developing Australia's position on the proposals to be considered by the ATCM.

22. Subsequent to the adoption of the Measure, consultations were undertaken with Australian Antarctic tourism and non-governmental organisations on its potential impact. These consultations informed the regulatory impact analysis.