

**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**

**Regulation Impact Statement**

# NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

## SUMMARY PAGE

### **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**

#### **Nature and timing of proposed treaty action**

1. The proposed treaty action is the approval of Measure 4 (2004) *Insurance and contingency planning for tourism and non governmental activities 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 27th Antarctic Treaty Consultative Meeting (ATCM) in Cape Town on 4 June 2004.
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 safety of tourism and non-governmental activities in the Treaty area, which have greatly expanded over the past two decades. It will also reduce the risk of disruption to national Antarctic programs. The Measure will introduce new contingency planning and insurance requirements for tourist and non-governmental operators. These requirements will make obligatory aspects of the previous voluntary procedures for tourism and non-governmental activities 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 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] ATS 6.

8. Implementation of the Measure will enhance safety in the Antarctic. Antarctica is a physically remote, inhospitable, unpredictable and potentially dangerous region. The requirements under the Measure ensure that tourist and non-governmental operators recognise and respond appropriately to the inherent dangers of activities in the Antarctic environment. The Measure also highlights the need for such activities to be carried out in a safe and self-sufficient manner, in order to avoid potential impacts on national Antarctic programs, and risks to the safety of those involved in search and rescue operations when emergencies arise.

## **Obligations**

9. The Measure obliges the Contracting Parties to the Treaty to require people within their jurisdiction who are organising or conducting tourist or non-governmental activities in the Antarctic to draw up and have in place appropriate contingency plans and sufficient arrangements for health and safety, search and rescue, and medical care and evacuation; and put in place adequate insurance or other arrangements to cover any costs associated with search and rescue and medical care and evacuation.

10. In addition, the Measure sets out secondary requirements which also need to be adhered to. The contingency plans and arrangements must be in place prior to the start of the activity. In addition, the plans and arrangements cannot be reliant upon support from other operators or national programs unless that operator or program agrees.

## **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

**Measure 4 (2004) Insurance and contingency planning for tourism and non governmental activities in the Antarctic Treaty area,  
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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 January 2007. 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.