

# **REGULATION IMPACT STATEMENT**

## **MEASURE 4 (2004)**

### **INSURANCE AND CONTINGENCY PLANNING FOR TOURISM AND NON GOVERNMENTAL ACTIVITIES IN THE ANTARCTIC TREATY AREA**

27<sup>th</sup> Antarctic Treaty Consultative Meeting:  
Cape Town, 4 June 2004

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# MEASURE 4 (2004)

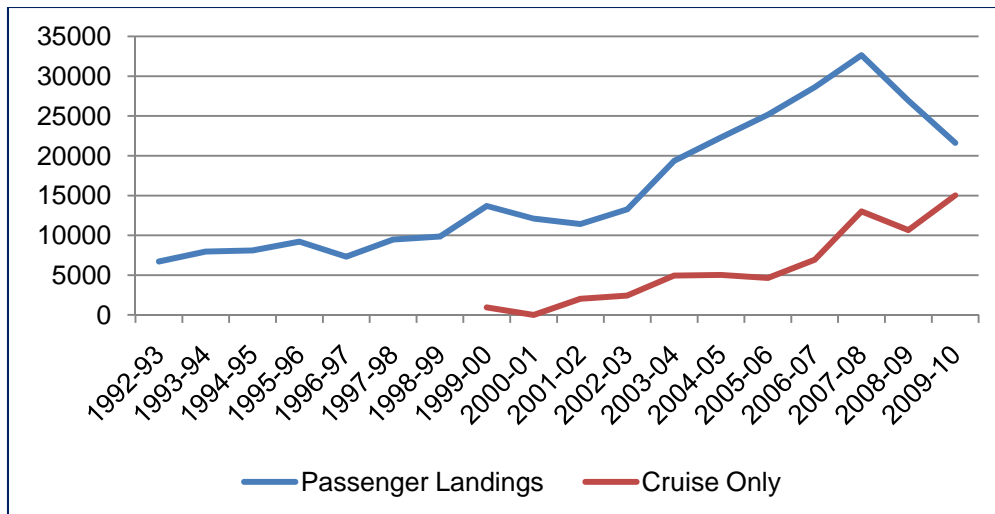
## INSURANCE AND CONTINGENCY PLANNING FOR TOURISM AND NON GOVERNMENTAL ACTIVITIES IN THE ANTARCTIC TREATY AREA

### 1. PROBLEM

#### Overview

- 1.1 Tourism and other non-government activities undertaken in the Antarctic are governed by the Antarctic Treaty and the Protocol on Environmental Protection to the Antarctic Treaty (Protocol).
- 1.2 Measures, Decisions and Resolutions<sup>1</sup> that give effect to the principles of the Antarctic Treaty and Protocol are developed at annual Antarctic Treaty Consultative Meetings (ATCMs) by consensus agreement of the Antarctic Treaty Consultative Parties (ATCPs).<sup>2</sup> Of these instruments, Measures are intended to be legally binding once approved by all ATCPs.
- 1.3 Tourism and other non-governmental activities in Antarctica have expanded markedly over the past two decades (Figure 1 refers). Australians constitute approximately nine per cent of consumers within the Antarctic tourism market.

Figure 1: Antarctic seaborne tourism trends from 1992-93 to 2009-10<sup>3</sup>



- 1.4 Serious incidents arising from tourism and other non-governmental activities in the Antarctic have raised concern amongst ATCPs (Table 1 and Table 2 refer). Although no loss of life has occurred, evacuations have been required in several instances, including Australian nationals.

<sup>1</sup> Prior to 1995, these instruments were collectively referred to as Recommendations.

<sup>2</sup> As at March 2011, there are 48 parties to the Antarctic Treaty including 28 consultative parties.

<sup>3</sup> International Association of Antarctica Tour Operators, 'IAATO Overview of Antarctic Tourism: 2009-10 Season and Preliminary Estimates for 2010-11 and Beyond' (2010) ATCM 33/IP/113/e 18 (based on available data).

1.5 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 this inhospitable and isolated environment.<sup>4</sup> 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.<sup>5</sup>

*Table 1: Antarctic tourism vessel incidents 2007-08 to 2009-10*

<b>Vessel</b>	<b>Incident</b>	<b>Outcome</b>
<b><i>Clelia II</i></b>	Struck a rock damaging its propeller and shaft in January 2010.	Returned to port under its own power for repairs.
<b><i>MV Ocean Nova</i></b>	Grounded in February 2009.	Passengers were evacuated to nearby vessels. The vessel was freed from its position the next day without serious damage to the hull and with no leakage of fuel.
<b><i>MV Ushuaia</i></b>	Grounded in December 2008 puncturing two fuel tanks.	Passengers were evacuated to nearby vessels. A small fuel spill occurred and the vessel was floated free two days later.
<b><i>MS Fram</i></b>	Lost electrical power and drifted into a glacier in December 2007, damaging a lifeboat.	Power was quickly restored, but the vessel was escorted back to port in Ushuaia as a precautionary measure, due to the insufficient availability of lifeboats.
<b><i>MS Explorer</i></b>	Sank after being damaged while navigating in ice in November 2007.	Following a mayday call, all passengers and crew were evacuated into lifeboats before the vessel sank. All were safely rescued within five hours. A small fuel spill occurred.
<b><i>MV Nordkapp</i></b>	Grounded in January 2007 with minor damage to the hull.	Passengers were evacuated to nearby vessels and the vessel was later freed from its position. A small fuel spill occurred.
<b><i>MV Lybov Orlova</i></b>	Grounded in November 2007.	Vessel later towed free without significant damage.

<sup>4</sup> Pursuant to international conventions, the Australian government is only responsible for the *coordination* of search and rescue operations in the Australian maritime and aviation search and rescue regions (SRRs). Australia's aviation SRR extends between 75° east to 163° east to the South Pole. Australia's maritime SRR extends between 75° east to 163° east to Antarctica's continental shelf. See Regulation V/15 of the Annex to the International Convention for the Safety of Life at Sea; Chapter 2 of the Annex to the International Convention on Maritime Search and Rescue; and Annex 12 to the Convention on International Civil Aviation. Furthermore, there is no duty upon Australia to coordinate search and rescue operations on land in the Antarctic.

<sup>5</sup> Chapter V of the International Convention for the Safety of Life At Sea provides that there is an obligation to provide assistance to vessels in distress. Similarly, Article 25 of the International Convention on International Civil Aviation provides for the provision of assistance to aircraft in distress. Neither convention provides a right of compensation to parties that afford assistance.

- 1.6 Recognising these factors, the ATCPs adopted Measure 4 (2004) *Insurance and contingency planning for tourism and non governmental activities in the Antarctic Treaty area*.

*Table 2: Incidents involving Australian private adventurers in the Antarctic*

<b>Incident</b>	<b>Outcome</b>
In December 2003, an Australian private adventurer attempted an unauthorised return flight to the South Pole from New Zealand. On the return leg, an unplanned landing occurred at the McMurdo station ice runway because the aircraft had insufficient fuel due to headwinds.	United States officials at McMurdo station provided accommodation while arrangements were made for the provision of aviation fuel from a supply established for an authorised private expedition.
In January 2001, an Australian private adventurer fell into a crevasse on the Antarctic Peninsula while attempting an unauthorised crossing of the Peninsula.	The individual incurred severe injuries and was evacuated following a search and rescue operation planned and conducted by the Chilean government.

### **Current system of non-obligatory self-regulation**

- 1.7 In 1994, the 18<sup>th</sup> 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;
  - provide information to assist in the preparation of contingency plans for emergency situations including search and rescue, medical care and evacuation; and
  - consider insurance.
- 1.8 In 2004, the 27<sup>th</sup> 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.
- 1.9 Resolution 4 (2004) is intended as an interim arrangement during the implementation period for Measure 4 (2004), which was also adopted at the 27<sup>th</sup> ATCM.

### **Measure 4 (2004)**

- 1.10 Measure 4 (2004) aims to minimise the risks posed by the conduct of tourism and other non-government activities in the Antarctic.<sup>6</sup> The measure promotes the principles of operator planning, preparedness and self-sufficiency.
- 1.11 Measure 4 (2004) provides that ATCPs are to oblige operators<sup>7</sup> under their jurisdiction organising or conducting tourist or other non-governmental activities in the Antarctic for which advance notice is required in accordance with Article VII(5) of the Antarctic Treaty:<sup>8</sup>

<sup>6</sup> Paragraph 1.5 refers.

<sup>7</sup> Operators include individuals who plan and undertake irregular private adventure expeditions to the Antarctic, also known as 'private adventure expeditioners'.

- to develop and put in place appropriate contingency plans and sufficient arrangements for health and safety, search and rescue, medical care and evacuation; and
- to obtain adequate insurance or other arrangements to cover any costs associated with search and rescue, medical care or evacuation operations.

Moreover, operators must ensure that:

- the contingency plans and arrangements are implemented before the activities commence; and
- those plans and arrangements are *not reliant* upon the support of other operators or national Antarctic programs without prior express written consent.

1.12 On its entry into force, Measure 4 (2004) would apply to all parties to the Antarctic Treaty and consequently to their respective operators. Pursuant to Article 34 of the Vienna Convention on the Law of Treaties, the measure would not apply to a non-party state (nor its nationals) without its consent.

### ***Need for obligatory regulation***

1.13 In adopting Measure 4 (2004) the ATCPs agree that the capacity of the current system of non-obligatory self-regulation to minimise the risks posed by the current and projected future scales of tourism and other non-government activities is limited.

1.14 Australia has strategic and policy interests in Antarctica. The implementation of Measure 4 (2004) would directly contribute to:

- the maintenance of the Antarctic Treaty system and enhancement of Australia's standing and influence within it;
- the protection of human health and safety; and
- the participation of Australian companies and tourists in the Antarctic tourism industry.

1.15 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 – such as Measure 4 (2004) – 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.

1.16 The Australian Government has domestic administrative responsibilities for the Antarctic. These principally relate to the regulation of activities conducted in Antarctica by Australian entities.

1.17 The Australian Government – aware of the need for tourism and other non government activities in Antarctica to be well managed to minimise risks to human health and safety – developed an Antarctic Tourism Policy in 2004. The policy advocates for Antarctic tourism to be managed in a socially responsible manner. A key driver for the development of this policy was recognition of the need to manage the activities of Australians in accordance with the objectives of the Antarctic Treaty and related international instruments.

1.18 Consequently, a decision by Australia not to implement Measure 4 (2004) would:

- perpetuate unacceptable risks to human health and safety; and
- deleteriously affect its:
- standing and influence in the Antarctic Treaty system;
  - relations with other ATCPs; and
  - domestic standing should an Australian operator be later involved in an incident that causes harm to human health and safety.

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<sup>8</sup> Article VII(5) of the Antarctic Treaty obliges the parties to give advance notice of all proposed expeditions to and within Antarctica, on the part of its ships or nationals, and all expeditions to Antarctica organised in or proceeding from its territory.

## **2. OBJECTIVE**

2.1 Australia seeks to implement Measure 4 (2004) to:

- minimise unacceptable risks to human health and safety;
- minimise the risk of disruption to national Antarctic programs;
- maintain its standing amongst ATCPs; and
- advance socially responsible tourism operations as per Antarctic Tourism Policy (2004).

## **3. OPTIONS**

3.1 There are two options:

### **Option 1**

#### **Maintenance of existing system of non-obligatory regulation**

- do not implement Measure 4 (2004) and maintain reliance upon the current system of non-obligatory regulation.

### **Option 2**

#### **Implementation of explicit government regulation**

- implement Measure 4 (2004) and modify Commonwealth legislation to give subsequent effect.

3.2 Note that implementation of Measure 4 (2004) via quasi-regulation (i.e. development of a national code of practice or industry accreditation scheme) is not a feasible option given:

- a Measure adopted by the ATCM requires all ATCPs to effect domestic implementation for that Measure to have substantive effect; and
- the substance and rigour of national codes and schemes typically vary from party to party. It follows that the universal efficacy of Measure 4 (2004) would be impeded where one party's national code of practice or accreditation scheme is less rigorous than those of other parties.

## **4. IMPACT ANALYSIS**

### **Option 1: Maintenance of current system of non-obligatory regulation**

#### ***Costs and benefits to tourism and non government activity operators***

4.1 Option 1 represents the status quo and would impose no additional costs or benefits.

4.2 Given it does not compel operator planning, preparedness and self-sufficiency, Option 1 does not minimise the risk of accidents and emergencies. Therefore, the likelihood of requests upon operators to provide unplanned assistance to accidents and emergencies is greater if the status quo is maintained.

#### ***Costs and benefits to government***

4.3 Maintenance of the status quo would not minimise the risks posed by the conduct of tourism and other non-government activities in the Antarctic.

4.4 Option 1 would not satisfy the Australian Government's Antarctic Tourism Policy (2004) – namely its endorsement of operator planning, preparedness and self-sufficiency.

4.5 ATCPs and the Australian public expect Australia to take proactive measures to minimise harm risks posed by Australian tourism and other non government operators.

4.6 The Australian Government was party to the unanimous adoption of Measure 4 (2004) at the 27th ATCM. Measure 4 (2004) requires the approval of all ATCPs (including Australia) to enter effect. Given these considerations, Australia's international standing on Antarctic governance matters and its bilateral relations with key ATCPs would be detrimentally affected if it decides not to implement Measure 4 (2004).

- 4.7 Australia's standing within the Antarctic Treaty System would also be harmed should an Australian operator without adequate contingency plans or insurance have an incident *after* Australia decides not to implement Measure 4 (2004). Such an occurrence may also harm the Australian Government's domestic standing.

### **Costs and benefits to consumers**

- 4.8 The current system of non-obligatory self-regulation imposes negligible costs upon consumers.
- 4.9 The health and safety of consumers would remain dependent upon operators' *voluntary* development of contingency plans and insurance.

### **Option 2: Implementation of explicit government regulation**

- 4.10 Option 2 would affect individuals and operators that organise or conduct tourism or other non governmental activities in the Antarctic Treaty area.

### **Costs and benefits to tourism and non government activity operators**

- 4.11 Option 2 would not impose significant additional costs upon current operators given the obligations contained in Measure 4 (2004) are already being substantively met.
- 4.12 The majority of operators view contingency planning and insurance as an unavoidable cost in the conduct of operations in the Antarctic.
- 4.13 Nevertheless, under existing legislation, the Australian Government cannot *compel* operator adherence to *Recommendation XVIII-1* and Resolution 4 (2004) guidance.
- 4.14 Option 2 would *compel* new operators to prepare contingency plans and obtain insurance covering search and rescue and medical care and evacuation costs.
- 4.15 It is important to note that the great majority of operators – aware of Antarctica's remoteness and harsh climactic conditions – prepare contingency plans to safeguard health and safety as a matter of prudence, safe practice, and sound business risk management. To prepare contingency plans, a new operator may need to obtain industry expert advice (eg from a shipping safety consultant, mountaineering guide or another experienced operator. Although the cost of obtaining such expert advice is not known, we understand that present practice in operating safely in the Antarctic involves the open sharing of expertise without charge. Accordingly, such costs would not be appreciable in the context of broader operational costs. Furthermore, an operator's commerciality may be harmed should a participant incur harm that may have otherwise been prevented had a contingency plan been developed.
- 4.16 A new operator would need to purchase insurance that covers search and rescue and medical care and evacuation costs. The cost of such insurance will vary from operator to operator and would be calculated on the basis of several factors, including:
- the nature of operations to be undertaken;
  - the duration and location of operations to be undertaken;
  - the operator's previous claims history;
  - staff credentials and skills; and
  - vessel characteristics.

The cost of obtaining insurance coverage for search and rescue and medical care and evacuation would not be significant in the context of operational safety in the Antarctic.<sup>9</sup> The great majority of operators already obtain such insurance coverage. The cost of search and rescue and medical care and evacuation operations *without* insurance would be prohibitive and may jeopardise operator commerciality. Although the extent of such costs is incident dependant, they may include the costs of air and sea search and rescue operations,

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<sup>9</sup>The cost of insurance is discussed in detail at 5.3.



transportation of medical care providers to the location of the incident, and the charter of vessels and aircraft to affect medical evacuations.

- 4.17 The only administrative cost envisaged under option 2 would arise from a new obligation on operators to provide documentary evidence of compliance with Measure 4 (2004) requirements (for example human health and safety management plans and insurance certificates). However, it is anticipated that these tasks would not be time or resource intensive.
- 4.18 The resources to be expended by operators in acquiring the requisite knowledge of regulatory obligations under Measure 4 (2004) would be negligible given these are already substantively adhered to and therefore understood.
- 4.19 The introduction of a requirement for all tourism and non governmental operators to have in place arrangements for contingency planning and insurance would minimise the likelihood of operators having to expend resources in the assistance of other operators in accident and emergency situations.
- 4.20 Aspects of the obligations arising from Measure 4 (2004) are closely related to those under Measure 1 (2005) *Annex VI to the Protocol of Environmental Protection to the Antarctic Treaty: Liability arising from environmental emergencies*. In particular, both measures require operators to establish contingency plans and maintain adequate insurance or other financial security. It is anticipated that operators will integrate contingency planning requirements under Measure 4 (2004) with those for responding to environmental emergencies in the Antarctic under Measure 1 (2005). The additional insurance requirements under Measure 1 (2005) relate to the operator's potential liability for costs where the operator fails to take prompt and effective response action to an environmental emergency caused by that operator. Insurance costs in implementing both measures are likely to be encompassed within existing limits of liability insurance policies.<sup>10</sup>

### **Costs and benefits to government**

- 4.21 The Australian Government has strategic and policy interests in Antarctica. Of these the implementation of Measure 4 (2004) would directly contribute to:
- the maintenance of the Antarctic Treaty system and enhancement of Australia's standing and influence within it;
  - the protection of human health and safety;
  - the participation of Australian companies and tourists in the Antarctic tourism industry.
- 4.22 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 – such as Measure 4 (2004) – 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.
- 4.23 A decision by Australia not to implement Measure 4 (2004) would perpetuate unacceptable risks:
- to human health and safety of individuals participating in activities;
  - to the health and safety of rescuers and integrity of equipment used to undertake search and rescue operations in the Antarctic;
  - of disruption of national Antarctic programs; and
- deleteriously affect its:
- standing and influence in the Antarctic Treaty system;
  - relations with other ATCPs; and
  - domestic standing should an Australian operator be later involved in an incident that causes harm to human health and safety.

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<sup>10</sup> Maritime and aviation liability are addressed through international conventions governing limits to liability – namely the Protocol to the 1976 *Convention on Limitation of Liability for Maritime Claims* and the *Convention for the Unification of Certain Rules for International Carriage by Air*.

National Antarctic programs operate under long-term, complex logistical arrangements. Scientific programs in particular may extend over several years and may only be feasible at certain times and at certain locations. Disruption due to an incident has the potential to significantly adversely affect the effectiveness of such programs. By way of example, it is estimated that diversion of Australia's Antarctic resupply and research vessel, *Aurora Australis*, would cost US\$100,000 per day (approx.) and a disruption that led to a failure to refuel a station could result in costs exceeding US\$10 million.

- 4.24 The only administrative cost to government under option 2 is a requirement to assess documentary evidence provided by operators proving their compliance with Measure 4 (2004) (for example human health and safety management plans and insurance certificates). Minimal resources would be expended by government to fulfil these requirements.
- 4.25 The likelihood of requests for Australia to effect expensive search and rescue operations within its maritime and aviation search and rescue regions (SRRs) in accordance with its international obligations may be reduced should all operators conduct activities in accordance with Measure 4 (2004).

### **Costs and benefits to consumers**

- 4.26 To offset risk to their operations – irrespective of whether they possess adequate insurance coverage – some operators may request *individual* consumers to:
- sign a liability waiver; and
  - obtain individual travel insurance that covers search and rescue and medical care and evacuation in the Antarctic.<sup>11</sup>

The costs of *individual* travel insurance coverage are not appreciable. Operators have indicated that at least one insurance broker provides individual travel insurance cover for search and rescue and medical care and evacuation costs. Its coverage is *global* and does not exclude operations in Antarctica. The per day premium for a 37-59 year old person is US\$5.75 per day.<sup>12</sup>

- 4.27 Given that the administrative obligations which would be placed upon operators under option 2 are not significant, industry would have no substantive justification to pass on additional administrative costs to consumers on the basis of option 2's implementation.
- 4.28 Option 2 would reduce risks to human health and safety.

## **5. CONSULTATION**

- 5.1 Australian Antarctic Division (AAD) conducted a full consultation on the implementation of Measure 4 (2004) with nineteen operators plus relevant government agencies in 2008.
- 5.2 In January 2008, operators were provided a briefing package on Measure 4 (2004). This consisted of:
- an introductory cover letter and overview;
  - a table detailing the anticipated effects upon the conduct of operations; and
  - a copy of Measure 4 (2004).

Operators were also invited to provide general comments and input on operation planning and management. No responses were provided.

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<sup>11</sup> Note that Measure 4 (2004) would not compel individual consumers to obtain travel insurance that covers search and rescue and medical care and evacuation.

<sup>12</sup> See 5.3.

5.3 In June 2008, operators were provided a questionnaire.<sup>13</sup> It invited operators to comment upon:

- the availability of insurance;
- the costs and conditions of insurance; and
- the impact of insurance upon operations and clients

Five operators provided responses. The responses indicated that:

- several insurance brokers can and do provide protection and indemnity insurance (i.e. 'P&I') for Antarctic operations;
- protection and indemnity insurance policies can (and typically do) cover costs associated with harm to persons;<sup>14</sup>
- all five operators possessed protection and indemnity insurance in addition to marine insurance (i.e. insurance covering costs associated with harm to a vessel's structure and equipment);
- the cost of protection and indemnity insurance is calculated on the basis of several factors, including:
  - the nature of the operation;
  - the duration and location of the operation;
  - the operator's previous claims history;
  - staff credentials and skills; and
  - vessel length and tonnage
- some operators require passengers to sign waivers and recommend individual travel insurance covering search and rescue and medical evacuation.<sup>15</sup>

Given the diversity of operations undertaken, the cost of protection and indemnity insurance necessarily varied from operator to operator. Costs for *comprehensive* protection and indemnity insurance varied from \$8,000 to \$140,000 per annum. Importantly, Measure 4 (2004) would not oblige operators to obtain *comprehensive* protection and indemnity insurance. It would only oblige operators to obtain insurance for the components of search and rescue and medical care and evacuation - a *proportion* of these sums.

5.4 In September 2008, operators were invited to participate in a consultation roundtable. Eight operators attended. Issues discussed included the implementation process, contingency planning and insurance costs. The consultation roundtable found that:

- participating operators did not possess significant concerns regarding the implementation of Measure 4 (2004);
- there are a range of insurance brokers willing to provide protection and indemnity insurance for Antarctic operations;
- those operators that indicated that they possessed insurance advised that insurance was an unavoidable yet manageable cost in the undertaking of Antarctic operations;<sup>16</sup> and
- the great majority of operators are likely to possess protection and indemnity insurance and contingency plans.

5.5 A very small number of individuals plan and undertake irregular private adventure expeditions in Antarctica from time-to-time.<sup>17</sup> These individuals are known as private

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<sup>13</sup> This questionnaire was prepared in response to an operator's concerns regarding the insurance costs associated with the proposed *Measure 1 (2005) Annex VI to the Protocol on Environmental Protection to the Antarctic Treaty: Liability arising from environmental emergencies*.

<sup>14</sup> Comprehensive protection and indemnity insurance typically affords coverage to four heads of risk – harm to the environment; harm to infrastructure; harm to third party property and harm to persons. The latter risk head typically includes the coverage of costs associated with search and rescue and medical care and evacuation.

<sup>15</sup> It was noted that at least one insurance broker provides *individual* travel insurance cover for search and rescue and medical care and evacuation costs. Its coverage is *global* and does not exclude operations in Antarctica. The per day premium for a 37-59 year old person is US\$5.75 per day.

<sup>16</sup> It was noted that insurance for search and rescue and medical evacuation would cost Antarctic small yacht passengers approximately \$US10 per day.

<sup>17</sup> Australian Antarctic Division (AAD) notes that only two private adventure expeditions were conducted by Australians between 2008-2010.

adventure expeditioners. The consultation roundtable found that private adventure expeditioners could obtain insurance from at least one insurance broker that would cover search and rescue and medical care and evacuation costs from Antarctica.<sup>18</sup>

5.6 A number of individuals who have conducted private adventure expeditions in the past and who currently conduct commercial tourism activities were consulted during the consultation process. Additional consultation was not feasible given:

- the infrequent, irregular and typically ‘one-off’ nature of these individuals’ activities;<sup>19</sup> and
- the absence of any central organisation or peak body.

5.7 Before each annual ATCM, the Department of Foreign Affairs and Trade (DFAT) convenes consultative meetings with:

- the AAD of the Department of Sustainability, Environment, Water, Population and Communities (DSEWPAC);
- the Attorney-General’s Department (AGD);
- the Department of Resources, Energy and Tourism (RET); and
- from time-to-time, operators and non-governmental organisations.

The views expressed by these parties are considered in formulating positions on ATCM proposals. Overall, these parties collectively support the implementation of Measure 4 (2004).<sup>20</sup>

5.8 Overall, consultation on the implementation of Measure 4 (2004) found that:

- participating operators did not possess significant concerns regarding the implementation of Measure 4 (2004) given:
  - the great majority of operators view contingency planning and insurance as a matter of prudence, safe practice, and management of commercial risks, and therefore an unavoidable yet manageable cost in the conduct of operations in the Antarctic;
  - all current operators already adhere to Measure 4 (2004) obligations through their voluntary adherence to *Recommendation XVIII-1* and Resolution 4 (2004) guidance; and
  - the great majority of operators would not incur significant additional costs;
- there are a range of insurance brokers willing to provide protection and indemnity and individual travel insurance to cover search and rescue and medical care and evacuation costs that may arise from a range of Antarctic operations (including private adventure expedition operations);
- those operators that indicated that they possessed insurance advised that insurance was an unavoidable yet manageable cost in the undertaking of Antarctic operations;
- the great majority of operators are likely to possess protection and indemnity insurance;
- the cost of protection and indemnity insurance is calculated on the basis of several factors:
  - the nature of an operation;
  - the duration and location of an operation;
  - the operator’s previous claims history;
  - staff credentials and skills; and
  - vessel length and tonnage
- participating operators were supportive of the implementation of Measure 4 (2004).

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<sup>18</sup> As noted at footnote 15, individuals – including private adventure expeditioners – may currently obtain global travel insurance cover for search and rescue and medical evacuation at a rate of \$US5.75 per day.

<sup>19</sup> Conversely, engagement with Antarctic commercial tourism operators is comparatively much more feasible given their greater perpetuity, organisational clarity and representation through a central organisation (i.e. IAATO).

<sup>20</sup> None of these parties provided comments that were critical of the implementation of Measure 4 (2004).

## **6. CONCLUSION AND RECOMMENDED OPTION**

6.1 The recommended option is Option 2 – namely the implementation of Measure 4 (2004) through legislative amendment to *Antarctic Treaty (Environmental Protection) Act 1980*. Option 2 would provide the greatest net benefit by virtue of its:

- maintenance of the Antarctic Treaty system and enhancement of Australia’s standing and influence within it;
- protection of human health and safety; and
- advancement of Australian participation within the Antarctic tourism industry.

## **7. IMPLEMENTATION AND REVIEW**

7.1 It is recommended that Measure 4 (2004) be implemented. Measure 4 (2004) may be implemented through amendment to the *Antarctic Treaty (Environment Protection) Act 1980*. Additional administrative requirements would be administered by the Minister for Sustainability, Environment, Water, Population and Communities via the Australian Antarctic Division (AAD) by virtue of the Minister’s responsibility for the administration of the *Antarctic Treaty (Environment Protection) Act 1980*.