

# Chapter 1

## Introduction

### Referral of inquiry and terms of reference

1.1 On 24 March 2014, the Senate referred Australia's future activities and responsibilities in the Southern Ocean and Antarctic waters to the Foreign Affairs, Defence and Trade References Committee for inquiry and report by 28 August 2014.<sup>1</sup> The reporting date was subsequently extended to 29 October 2014.<sup>2</sup>

1.2 The inquiry's terms of reference were as follows:

Australia's future activities and responsibilities in the Southern Ocean and Antarctic waters, including:

- (a) Australia's management and monitoring of the Southern Ocean in relation to illegal, unreported and unregulated fishing;
- (b) cooperation with international partners on management and research under international treaties and agreements;
- (c) appropriate resourcing in the Southern Ocean and Antarctic territory for research and governance; and
- (d) any other related matters.

### Conduct of the inquiry

1.3 The committee advertised the inquiry on its website and in the media, inviting submissions to be lodged by 1 July 2014. The committee also wrote directly to a range of people and organisations likely to have an interest in matters covered by the terms of reference, inviting them to make written submissions.

1.4 The committee received 23 submissions to the inquiry. The submissions are listed at Appendix 1, and are available on the committee's website at [www.aph.gov.au/senate\\_fadt](http://www.aph.gov.au/senate_fadt). Additional information, tabled documents and answers to questions on notice received during the inquiry are listed at Appendix 2, and are also available on the website.

1.5 The committee visited Tasmania on 15-16 September 2014. On 15 September the committee visited the Australian Antarctic Division's headquarters in Kingston, and toured the ships *Aurora Australis* and *RV Investigator* at Princes Wharf in Hobart. On 16 September the committee held a public hearing at the Hobart Function and Conference Centre. On 26 September, a second public hearing was held at Parliament House in Canberra. A list of the witnesses who appeared at the hearings is at Appendix 3. The Hansard transcripts of both hearings are available on the committee's website.

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1 *Journals of the Senate* No.23 - 24 March 2014, p. 691.

2 *Journals of the Senate* No.43 - 15 July 2014, p. 1174.

## Structure of the report

1.6 The committee's report is in six chapters. Chapter 2 discusses the international context for Australia's interests and obligations in the Southern Ocean, and the key principles of Australian policy in the region. Chapter 3 examines threats posed by transnational crime and other illicit activities, particularly illegal fishing, and Australia's response. Chapter 4 considers the environmental importance of the Southern Ocean, scientific research issues, and maritime mapping. Chapter 5 assesses present and proposed future resourcing for Australia's activities in the southern waters, potential economic benefits, and strengthening management and coordination to maximise the efficiency and effectiveness of our engagement. Chapter 6 provides the committee's conclusion.

## Background

### *Australia's maritime jurisdiction in the Southern Ocean*

1.7 Australia's Antarctic and sub-Antarctic marine jurisdictions cover a substantial geographic area, totalling more than five million square kilometres and comprising some 30 per cent of Australia's entire marine jurisdiction.<sup>3</sup> In addition to the Exclusive Economic Zones (EEZ) and continental shelves directly off Australia's southern mainland and Tasmania's coast, there are several areas of Australian maritime jurisdiction further south.

1.8 Australia asserts sovereignty over approximately 42 per cent of the Antarctic continent, known as the Australian Antarctic Territory (AAT), and this extends to its adjacent offshore waters. Australia's sovereignty over the AAT is not universally recognised, but under the 1959 Antarctic Treaty<sup>4</sup> all sovereign claims in Antarctica are effectively suspended in time: no new or expanded claims may be made while the Treaty is in force, and no act undertaken by its parties can constitute a basis for confirming or disputing an existing claim.<sup>5</sup> In line with an established understanding among Treaty parties in this regard, Australia exercises sovereign rights and takes responsibility for management of this area, but enforces its domestic law in the AAT only against Australian nationals.<sup>6</sup>

1.9 Australia exercises universally-recognised sovereignty over the Territory of Heard Island and McDonald Islands (HIMI) in the southern Indian Ocean, and over Macquarie Island in the sub-Antarctic Southern Ocean. HIMI is an external territory of Australia, while Macquarie Island is part of Tasmania.

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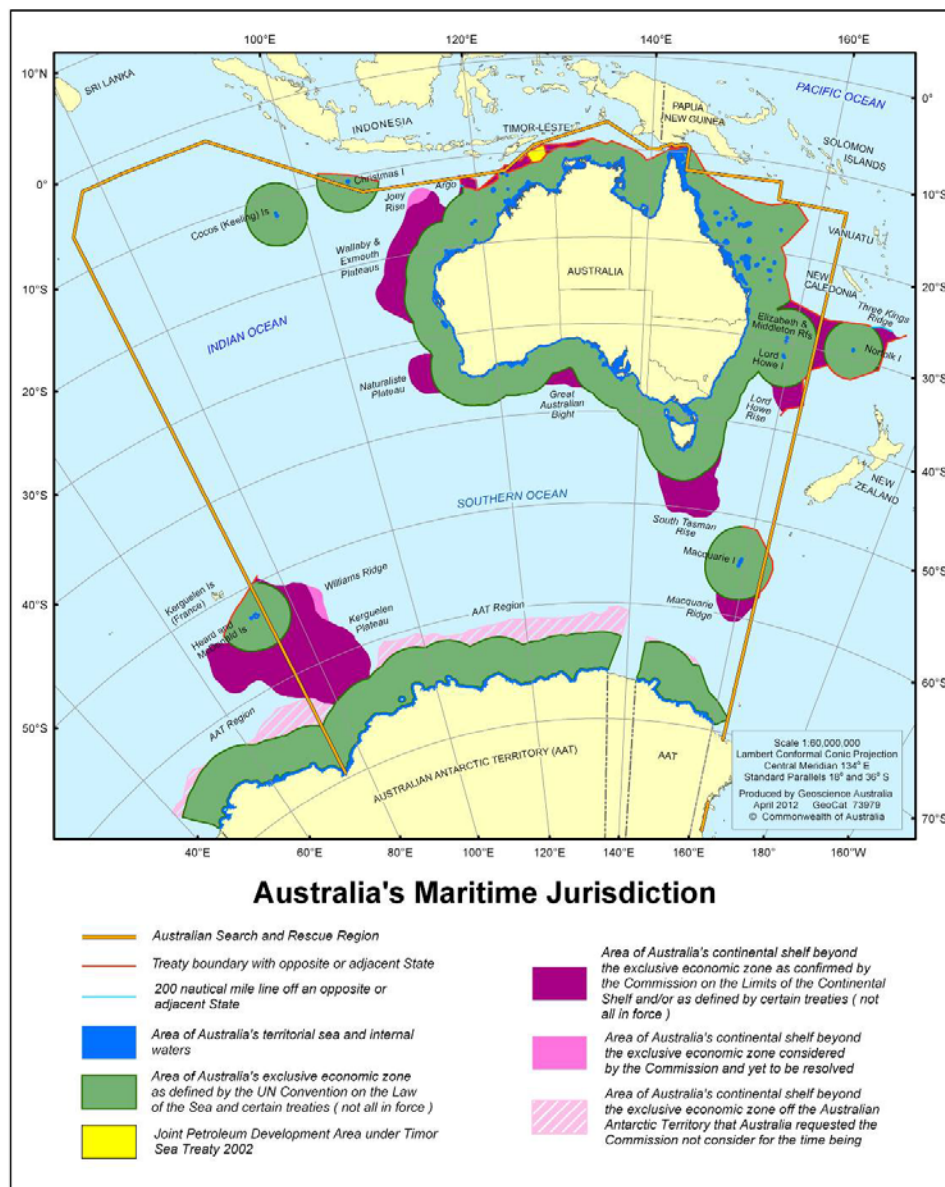
3 Geoscience Australia, *Submission 12*, p. 4.

4 *Agreement between the Governments of Australia, Argentina, Chile, the French Republic, Japan, New Zealand, Norway, the Union of South Africa, the Union of the Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America concerning the Peaceful Uses of Antarctica*, done at Washington 1 December 1959, entered into force for Australia 23 June 1961, [1961] ATS 12.

5 Antarctic Treaty, Article IV.

6 Department of Foreign Affairs and Trade, *Submission 6*, p. 3.

1.10 The HIMI territorial sea and EEZ lies mostly outside the jurisdiction of the Antarctic Treaty, but falls within the larger area covered by the Convention on the Conservation of Antarctic Marine Living Resources (CAMLR Convention),<sup>7</sup> and is treated as part of Australia's Antarctic jurisdiction for most purposes. As a result of its sovereignty over HIMI and Macquarie Island, Australia also enjoys exclusive rights to seabed resources in a vast area of extended continental shelf in the Southern Ocean.<sup>8</sup>



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7 Done at Canberra 20 May 1980, entered into force for Australia 7 April 1982, [1982] ATS 9.

8 See Dr Tony Press, 'Explainer: Australia's extended continental shelf and Antarctica', *The Conversation*, 30 May 2012, at <http://theconversation.com/explainer-australias-extended-continental-shelf-and-antarctica-7298>

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### *The Antarctic Treaty System and other international agreements*

1.11 The Antarctic Treaty System (ATS) provides the overarching international framework for the governance of the land and waters south of 60° South latitude, an area which includes a large portion of the Southern Ocean as well as the Antarctic continent itself, and incorporates part of Australia's Antarctic marine jurisdiction.<sup>9</sup> The Antarctic Treaty is the principal treaty of the ATS, and was negotiated between its original 12 parties with the intention 'to ensure that Antarctica would remain a place where science predominated and disagreements were resolved peacefully'.<sup>10</sup> Several other treaties have been added over the ensuing years to form the ATS, key among them the CAMLR Convention, and the (Madrid) Protocol on Environmental Protection and its annexes.<sup>11</sup> The network of agreements comprising the ATS now governs many of the issues that arise in the region and its waters, including prevention of conflict, environmental protection, resource exploitation, fisheries management and scientific research.

1.12 Australia was one of the original signatories to the Antarctic Treaty, which now has 50 parties: 29 'Consultative Parties' who are actively engaged in Antarctic research and are entitled to participate in decision-making under the Treaty, and 21 'Non-Consultative Parties' who do not maintain stations in Antarctica, but whose citizens may participate in scientific research.<sup>12</sup>

1.13 Beyond the ATS, various other international treaties also apply to Australia's activities within the Antarctic marine area and in the greater Southern Ocean. Much of the Southern Ocean is high seas, under which the various instruments and doctrines of the international law of the sea apply. Notably, Australia is responsible for coordinating search and rescue in a large portion of the Southern Ocean, under the International Convention on Maritime Search and Rescue<sup>13</sup> and other treaties.<sup>14</sup> The same sea area constitutes the Australian Security Forces Authority Area for the purpose of International Maritime Organisation (IMO) security arrangements, within which Australia is responsible for dealing with acts of violence against ships.<sup>15</sup>

1.14 Bilaterally, Australia has concluded more than 15 memoranda of understanding for policy, science and operational cooperation with other nations in Antarctica and its waters, most of which are negotiated and managed between the

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9 Department of Foreign Affairs and Trade, *Submission 6*, p. 1.

10 Department of Foreign Affairs and Trade, *Submission 6*, p. 2.

11 *Protocol on Environmental Protection to the Antarctic Treaty*, done at Madrid 4 October 1991, entered into force for Australia 14 April 1998, [1998] ATS 6.

12 Department of Foreign Affairs and Trade, *Submission 6*, p. 2.

13 Done at Hamburg 27 April 1979, entered into force for Australia 22 June 1985, [1986] ATS 29.

14 Australian Maritime Safety Authority, *Submission 9*, p. 3.

15 Australian Customs and Border Protection Service, *Submission 18*, p. 2; Australian Strategic Policy Institute, 'Policing our ocean domain: Establishing an Australian coast guard', *Strategic Insights* 41, June 2008, p. 5.

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Australian Antarctic Division (AAD) of the Department of the Environment and counterparts' Antarctic programs.<sup>16</sup>

### ***Recent developments***

#### *20-year Australian Antarctic Strategic Plan*

1.15 The 20-year Australian Antarctic Strategic Plan (20 Year Strategic Plan) was commissioned by the government in late 2013, and prepared by Dr Tony Press, former Director of AAD and Chief Executive Officer of the Antarctic Climate and Ecosystem Cooperative Research Centre (ACE CRC). Dr Press appeared as a witness at the committee's public hearing in Hobart on 16 September.

1.16 The completed Plan was presented to the Minister for the Environment in July 2014, and publicly released on 10 October 2014. The Plan offered 35 recommendations covering a broad range of aspects of Australia's role in Antarctica, including Australia's strategic priorities, engagement in the ATS, scientific research, logistics, government resourcing, coordination of activities, and maximising the benefits of Antarctic work in Tasmania.<sup>17</sup> The Plan's recommendations are listed at [Appendix 4](#).

1.17 The Plan emphasised the importance for Australia of ensuring that the ATS remained strong and stable and of investing in science, operations and infrastructure to maintain Australia's place as a leading Antarctic nation. It also made several recommendations for further work to establish Hobart as the world's leading Antarctic gateway.

1.18 Upon the Plan's release, the government described it as 'a blueprint for Australia's future engagement in the region'. The Hon Greg Hunt MP, Minister for the Environment, said the government would consider the report in detail and consult widely on its recommendations before providing a formal response in the coming months.<sup>18</sup>

1.19 The key findings and recommendations of the Plan on matters covered by this committee's inquiry are discussed further in the relevant sections of this report.

#### *Whaling in the Southern Ocean*

1.20 This inquiry also follows a landmark decision by the International Court of Justice (ICJ) in relation to Japanese whaling in the Southern Ocean. In 2010, the Australian Government initiated legal action in the ICJ challenging Japan's lethal whaling program. The case was heard by the court in 2013.

1.21 In its judgment, handed down on 31 March 2014, the ICJ determined that the killing of whales under Japan's program could not be justified as being for the

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16 Department of the Environment, *Submission 15*, p. 8.

17 AJ Press, *20 Year Australian Antarctic Strategic Plan*, July 2014.

18 The Hon Greg Hunt MP, Minister for the Environment & Senator the Hon Eric Abetz, Minister for Employment, 'Strategic Plan sets Tasmania as gateway for Antarctica', Joint Media Release, 10 October 2014.

purposes of scientific research as permitted under the International Convention for the Regulation of Whaling (ICRW),<sup>19</sup> and that Japan had not acted in conformity with various obligations under the ICRW.<sup>20</sup> The court did not outlaw altogether the use of "reasonable" lethal methods for whale research, but stated its expectation that Japan would take account of its reasoning and conclusions when considering whether to grant future whaling permits.<sup>21</sup>

1.22 Following the decision, Japan indicated its intention to abide by the judgment, and announced that it would conduct non-lethal research in the Southern Ocean in the 2014-15 season, while redesigning its lethal whaling program to resume in 2015-16.<sup>22</sup>

1.23 At the most recent International Whaling Commission (IWC) meeting held in September 2014 in Slovenia, the Commission passed a non-binding resolution, proposed by New Zealand and supported by Australia and others, requiring members to take into consideration the ICJ decision in the development of its future scientific whaling programs, and to put such programs before the full Commission for guidance prior to their implementation. In response, Japan indicated that it did not accept the terms of the resolution, and re-affirmed that it would re-commence 'scientific' whaling in 2015.<sup>23</sup>

#### *Australian vessels*

1.24 A number of key decisions in 2014 impact on the fleet of national research, supply and patrol vessels available to Australia for use in the Southern Ocean and Antarctic waters.

1.25 Australia's dedicated Antarctic research and supply 'icebreaker' ship, the *Aurora Australis*, is managed by the AAD. The *Aurora Australis* is an aging vessel due to retire, and discussions have been under way for some years regarding its replacement. The government announced in the 2014 Budget that the commissioning of a replacement vessel would proceed, and the Minister for the Environment subsequently announced that two companies had been shortlisted to tender for the construction of the new vessel. A contract with the successful tenderer is to be signed in late 2015, with the new vessel expected to be ready for operation in October 2019.<sup>24</sup>

1.26 The CSIRO Marine National Facility operates a vessel equipped and dedicated to the conduct of scientific research in Australian and surrounding waters. Following the retirement of the previous vessel, the *Southern Surveyor* in 2013, the

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19 Done at Washington 2 December 1946, entered into force for Australia 10 November 1948, [1948] ATS 18.

20 Department of the Environment, *Submission* 15, p. 17.

21 Department of Foreign Affairs and Trade, *Submission* 6, p. 6.

22 Hanna, Emily, 'Now what for Southern Ocean whaling?' *Flag Post* (Parliamentary Library blog), 10 June 2014.

23 'Japan defies IWC ruling on 'scientific' whaling', *The Guardian*, 18 September 2014.

24 The Hon Greg Hunt MP, Minister for the Environment, 'Shortlisted companies announced to build new Antarctic icebreaker', Media Release, 30 May 2014.

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new RV *Investigator* arrived in Hobart in September 2014. Assessment of research proposals and technical preparations are now taking place for the ship to commence active deployment from 2015.

1.27 The Australian Customs and Border Protection Service (ACBPS) maintains only one vessel with the capacity to patrol the ice-prone areas of the Southern Ocean. The most recent vessel, ACV *Ocean Protector*, was decommissioned in mid-2014. In its place, ACBPS has commissioned the ice-strengthened Australian Defence Force (ADF) vessel, the ADV *Ocean Shield*, which will ultimately be transferred to the management of ACBPS. The *Ocean Shield* is a sister ship to the *Ocean Protector*, so essentially identical in its capabilities, and is the only vessel in the border protection fleet with the range, endurance and sea and ice capability to operate in the Southern Ocean.<sup>25</sup> Like the *Ocean Protector* before it, the *Ocean Shield* will be allocated to meet all of Australia's border protection and humanitarian response needs as required, on a priority basis. In fact, due to competing priorities in Australia's northern waters, the *Ocean Protector* had conducted no patrols in the Southern Ocean since February 2012.

1.28 The ACBPS is also in the process of acquiring eight new Cape class patrol vessels, however, these are not suited for operations in the Southern Ocean and Antarctic waters.<sup>26</sup>

1.29 For its part, the ADF has little capacity to operate in the Southern Ocean. The navy possesses one ice-strengthened vessel with limited capability to operate in light ice (HMAS *Choules*), but the remainder of the fleet is not well suited to operate in sub-Antarctic waters. The Air Force has aircraft with the range to operate in the region, including the AP-3C Orion patrol plane and the C-17A Globemaster transport aircraft, but competing demand for these assets is high. The Department of Defence advised the committee that while the ADF was acquiring new capabilities which may have the ability to work in the Southern Ocean region, they had not been acquired specifically with that environment in mind, and 'the extent to which they are able to do so will depend on the threat environment and other demands on their capability.'<sup>27</sup>

#### *The 2014 Budget*

1.30 Significant controversy surrounded the impact of the 2014 Federal Budget on Australia's scientific, operational and other work in the Antarctic region. The government highlighted new funding in support of Australia's leadership as an Antarctic nation as one of the flagship outcomes of the budget, drawing attention to the commitment to procure a new icebreaker as a major demonstration of its commitment to both Tasmania and Antarctica.<sup>28</sup> Other new initiatives announced in

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25 Mr Roman Quaedvlieg, *Committee Hansard*, 26 September 2014, p. 30.

26 Mr Roman Quaedvlieg, *Committee Hansard*, 26 September 2014, p. 30.

27 Department of Defence, Opening Statement tabled at the committee's public hearing, 26 September 2014, p. 2.

28 The Hon Greg Hunt MP, Minister for the Environment, 'Boosting Australia's commitment to Tasmania and Antarctica with new icebreaker', Media Release, 13 May 2014.

the budget were \$24 million over three years for a new Antarctic Gateway Partnership for scientific research between AAD, the University of Tasmania and CSIRO (to be administered by the Australian Research Council), \$25 million over five years for the continued work of the Antarctic Climate and Ecosystems Cooperative Research Centre (ACE CRC), and \$38 million to upgrade Hobart airport.<sup>29</sup>

1.31 In addition, the government announced an additional \$45.3 million to support the Antarctic airlink, \$13.4 million for logistics support, and \$9.4 million for the maintenance of Australia's Antarctic bases.<sup>30</sup>

1.32 At the same time, core budget and staffing cuts to the Department of the Environment, CSIRO and other agencies and programs were severe, and expected to compromise Australia's ability to maintain its scientific and operational activities in the region.<sup>31</sup> The annual appropriation to the Department of the Environment for its Antarctic program was cut from \$136.4 million in 2013-14 to \$107.8 million in 2014-15, with a further \$17.8 million to be cut over the four-year forward estimates.<sup>32</sup> This formed part of an overall foreshadowed \$100 million cut to the Department of the Environment's core budget over four years, which it was expected would lead to the loss of around 670 jobs department-wide.<sup>33</sup>

1.33 For its part, the CSIRO was facing the biggest cut to its budget in recent memory. While \$65.7 million was allocated over four years for the operation of the new research vessel *RV Investigator*, core funding was cut by \$27 million in 2014-15 as part of \$111.4 million in direct reductions over the four year estimates, with the additional loss of an efficiency dividend of \$3.4 million.<sup>34</sup> It was widely reported that CSIRO would lose more than 500 positions, including significant losses from its marine and atmospheric research areas.<sup>35</sup>

## Acknowledgements

1.34 The committee thanks all those who contributed to the inquiry by making submissions, providing additional information and appearing at the public hearings. The committee is also grateful to the staff of AAD and CSIRO who facilitated and hosted its site visits in Tasmania.

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29 The Hon Greg Hunt MP, Minister for the Environment, 'Shortlisted companies announced to build new Antarctic icebreaker', Media Release, 30 May 2014.

30 The Hon Greg Hunt MP, Minister for the Environment, 'Boosting Australia's commitment to Tasmania and Antarctica with new icebreaker', Media Release, 13 May 2014.

31 ABC news online, 'Fears over Antarctic research jobs and programs under \$100 million federal budget cuts', 8 April 2014.

32 Portfolio Budget Statement 2014-15, Environment Portfolio, p. 76.

33 ABC news online, 'Fears over Antarctic research jobs and programs under \$100 million federal budget cuts', 8 April 2014.

34 CSIRO, *Annual Directions Statement 2014*, May 2014, p. 3.

35 ABC Rural News, 'CSIRO job cuts to hit marine research', 11 June 2014.



**Note on references**

1.35 References to the committee *Hansard* are to the proof *Hansard*. Page numbers may vary between the proof and the official *Hansard* transcript.

