

Measure 16 (2009) Amendments to Annex II to the Protocol on Environmental Protection to the Antarctic Treaty

Introduction

- 7.1 Measure 16 comprises amendments to Annex II to the Protocol on Environmental Protection to the Antarctic Treaty. The Protocol commits parties to the protection of the Antarctic environment, including its dependent and associated ecosystems, and designates Antarctica as a natural reserve.¹ There are six technical annexes to the Protocol that regulate human activities in Antarctica, five of which are in force. Annex II sets out measures for the conservation and protection of Antarctic fauna and flora.²
- 7.2 The amendments to Annex II (Measure 16) have been under negotiation since 2001 and were adopted by consensus at the Antarctic Treaty Consultative Meeting on 17 April 2009.³ Measure 16 will automatically enter into force on 17 April 2010 unless one of the Contracting Parties notifies that it seeks an extension of that period or that it is unable to approve the measure. Once effective, measures are legally binding on all Contracting Parties.⁴

1 National Interest Analysis (NIA), para 9.

2 NIA, para 2.

3 Mr Jonathon Barrington, *Transcript of Evidence*, 22 February 2010, p. 11.

4 NIA, paras 3, 4 and 6.

Reasons to take treaty action

- 7.3 Australia has been a Consultative Party to the Antarctic Treaty since it came into force in 1961. Since then, Australia has been a strong advocate for the importance of the Treaty and successive Australian governments have viewed maintenance of the Treaty and its associated agreements as a high priority.⁵
- 7.4 Australia was the principal proponent of the review of Annex II and the resulting Measure 16.⁶
- 7.5 Measure 16 is intended to enhance protection of the Antarctic environment in a number of ways, including through improving processes for listing Specially Protected Species, introducing permit requirements for the taking of native invertebrates, and strengthening controls on unintended introduction of non-native species and diseases.⁷
- 7.6 The Committee was informed that there is a very strong commitment to protection of the Antarctic environment amongst all parties to the Antarctic Treaty, and that there is no indication that any Consultative Party will seek a time extension or resile from approval of Measure 16.⁸

Obligations

- 7.7 The obligations arising from Measure 16 include:
- Extending the protection currently applied under Annex II to native mammals, birds and plants to include native invertebrates. Under the new arrangements, native invertebrates may only be taken with a permit and permits will only be issued for certain purposes, such as scientific study or to provide specimens for museums, educational institutions and zoos.⁹ Parties are also obliged to:
 - ⇒ limit the taking of native invertebrates under permits to those strictly necessary to meet the purpose of the permit;
 - ⇒ accord special protection to invertebrates designated as Specially Protected Species;

5 NIA, paras 9 and 10.

6 NIA, paras 6 and 8.

7 Mr Jonathon Barrington, *Transcript of Evidence*, 22 February 2010, p. 11.

8 Mr Jonathon Barrington, *Transcript of Evidence*, 22 February 2010, p. 11, 12.

9 Mr Jonathon Barrington, *Transcript of Evidence*, 22 February 2010, p. 11.

- ⇒ prohibit the issuing of permits for Specially Protected Species except with a compelling scientific purpose;
 - ⇒ prohibit the use of lethal techniques on invertebrates; and
 - ⇒ obtain and exchange information on the status of native invertebrates.¹⁰
- Improved processes for listing species for special protection. Evidence supporting the designation of a species as a Specially Protected Species will now be required and parties have adopted the International Union for Conservation of Nature (IUCN) threatened species criteria for use in assessing species.¹¹
 - Broadening provisions for the introduction of non-native species and diseases to include unintended introductions, including:
 - ⇒ prohibiting the introduction of all non-indigenous living organisms except in accordance with a permit, and limiting the permitted purpose of importation;¹²
 - ⇒ obliging contracting parties to remove or dispose of any non-native species introduced without a permit where feasible and to take reasonable steps to control the harm caused by the introduction;¹³
 - ⇒ augmenting obligations to ensure that poultry and avian products are free from contamination by disease;¹⁴ and
 - ⇒ prohibiting the introduction of non-sterile soil.¹⁵
- 7.8 The Committee was informed that the circumstances in which a non-native species might be introduced to Antarctica include for scientific research, such as to test the reaction of species to intense cold and evaluate whether, as the Antarctic environment changes, species might be likely to extend their range into Antarctica.¹⁶
- 7.9 The unintended introduction of a non-native species might occur through cargo or personnel. The intent of this provision is to ensure that any species that might arrive does not become established in Antarctica.¹⁷
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10 NIA, para 12.

11 Mr Jonathon Barrington, *Transcript of Evidence*, 22 February 2010, p. 11.

12 NIA, para 14.

13 NIA, para 14.

14 NIA, para 17.

15 NIA, para 18.

16 Mr Jonathon Barrington, *Transcript of Evidence*, 22 February 2010, p. 12.

17 Mr Ewan McIvor, *Transcript of Evidence*, 22 February 2010, p. 13.

Implementation

- 7.10 Measure 16 will be implemented through amendments to the *Antarctic Treaty (Environment Protection) Act 1980*. The Committee notes these amendments were introduced into the Parliament on 10 February 2010.¹⁸

Conclusions and recommendation

- 7.11 These amendments were adopted by the Antarctic Treaty Consultative Meeting on 17 April 2009 but were not tabled in the Parliament and referred to this Committee until 2 February 2010, with legislation implementing the amendments introduced on 10 February 2010. While the Committee acknowledges the need to legislate prior to the amendments' automatic entry into force, it considers that the Department of the Environment, Water, Heritage and the Arts and, given their involvement in Antarctic matters, the Department of Foreign Affairs and Trade need to more effectively manage the treaty making process to ensure that treaty actions are tabled in a timely manner and that this Committee's timeframes are respected. This is especially so in this case, as the Australian Government was the principal proponent of the Annex II review.
- 7.12 The Committee supports the priority that Australia places upon the protection of Antarctica through the Antarctic Treaty and the Protocol on Environmental Protection to the Antarctic Treaty. The proposed amendments to Annex II of the Protocol will extend and improve the level of environmental protection that is currently in place. The Committee therefore supports Measure 16 and recommends that binding treaty action be taken.

18 Mr Jonathon Barrington, *Transcript of Evidence*, 22 February 2010, p. 11.

Recommendation 8

The Committee supports *Measure 16 (2009) Amendment of Annex II to the Protocol on Environmental Protection to the Antarctic Treaty* and recommends that binding treaty action be taken.

Mr Kelvin Thomson MP

Chair

