Proposal for an Informal Intersessional Process to Share Information on Domestic Implementation of Annex VI to the Protocol on Environmental Protection to the Antarctic Treaty

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Summary

The 2005 ATCM adopted Measure 1, Annex VI to the Protocol on Environmental Protection to the Antarctic Treaty: Liability arising from environmental emergencies. As at ATCM XLIV (2022), 19 of 27 Parties whose approval is required for this liability annex to enter into effect had approved Measure 1. This paper proposes an informal intersessional process to continue the ATCM’s work on evaluating progress towards Annex VI becoming effective and to exchange information on the actions Parties can take to approve Measure 1.

Background

At ATCM XXVIII (2005) Consultative Parties adopted Measure 1 (2005) Annex VI to the Protocol on Environmental Protection to the Antarctic Treaty: Liability arising from environmental emergencies. Annex VI is an important element in supporting the objective of the Environmental Protocol to comprehensively protect the Antarctic environment and dependent and associated ecosystems.

Annex VI deals with ‘environmental emergencies related to scientific research programs, tourism and all other governmental and non-governmental activities in the Antarctic Treaty area for which advance notice is required under Article VII (5) of the Antarctic Treaty’. The operators of such activities will be required to undertake reasonable preventative measures and to establish contingency plans for responses to incidents with potential adverse impacts on the Antarctic environment. In case of environmental emergencies, operators will be required to take prompt and effective response action; if they do not, they will be liable for its cost.

Annex VI becomes effective on the date on which Measure 1 (2005) has been approved by all 27 Consultative Parties entitled to attend ATCM XXVIII. As at ATCM XLIV (2022), 19 Parties whose approval is required for this liability annex to enter into effect had approved Measure 1. A further two Parties not entitled to attend ATCM XXVIII had approved Measure 1.

Over the past 18 years, the ATCM has adopted a series of Decisions to annually evaluate the progress towards Annex VI becoming effective and what action may be necessary and appropriate to encourage Parties to approve Annex VI in a timely manner, including Decisions 1 (2005), 4 (2010) and 5 (2015). Most recently, Decision 2 (2022) called on Parties to continue to share with one another information and experience in relation to approving Measure 1 (2005), to support progress towards Annex VI becoming effective.

The Consultative Parties have also regularly highlighted the importance and urgency of bringing Annex VI into force through declarations adopted at the ATCM, including the 2021 Paris Declaration, which reflects their aim ‘to make all necessary efforts to bring Annex VI of the Environmental Protocol on Liability Arising from Environmental Emergencies into force, as a critical step towards implementing Articles 15 and 16 of the Environmental Protocol’. Further, the ATCM Multi-Year Strategic Work Plan (Decision 3 (2022)) includes a related priority issue and actions.

Proposal

This paper seeks to support the call for Parties to share information and experience to make progress towards Annex VI becoming effective in a timely manner. Parties that have approved Annex VI have demonstrated a willingness to share information, including through disseminating legislation passed to domestically implement Annex VI, and the annual ATCM provides an opportunity for valuable exchanges. However, there would be value in a less time-constrained and more detailed intersessional dialogue to support further Parties to approve and domestically implement Annex VI. This recognises that many Parties have already approved Measure 1 (2005) and may be well placed to provide advice and support to Parties that have yet to do so.

An informal intersessional process could provide a practical and constructive forum for relevant Parties to raise questions and seek information, or to share experiences on the actions they have taken to domestically implement Annex VI. Noting that some Parties may face similar challenges, it could allow for the sharing of targeted information on shared challenges. As identified in previous discussions, these may include *inter alia* approaches to establishing reasonable preventative measures to reduce the risk of environmental emergencies; developing contingency plans for responses to environmental incidents; taking prompt and effective response action to any environmental emergency arising from such activities; and maintaining adequate insurance or other financial security to cover the costs of response action taken by a Party on its behalf.

Australia proposes to coordinate an informal intersessional process on these issues. While the primary purpose would be to support Parties to take their own domestic steps to implement Measure 1 (2005), a summary report could be prepared for ATCM XLVI, highlighting key matters discussed. We would be pleased to consult and collaborate with other Parties interested in taking this important work forward.