ENFORCING LAWS IN A REMOTE LOCATION—ANTARCTICA

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THE AUSTRALIAN ANTARCTIC TERRITORY IS REMOTE, THERE IS NO permanent population and it is isolated for much of the year, yet there is a comprehensive environment protection regime in place, which amongst other things, prohibits mining, provides for the protection of fauna and flora and requires prior environmental impact assessment of all activities. Many of the environmental laws flow from international agreements.

Enforcement of these laws is difficult because none of the essential infrastructure for law enforcement exists in the Antarctic. Another difficulty is the issue of sovereignty and the enforcement of Australian laws against foreign nationals in the Australian Antarctic Territory. These, and the increasing number of visitors to the area, make environmental education very important. While education is the principal mechanism by which compliance is achieved, a number of other mechanisms, such as the cancellation of permits and public scrutiny of activities, can be also be used.

The communities at Australia’s Antarctic stations are small, typically about thirty during the winter, although numbers swell during the summer months when many more activities take place. Scientific field trips are undertaken, the stations are resupplied for the winter months and major maintenance work is carried out. The communities at the stations consist of groups of highly motivated and well qualified people who have been chosen carefully to work in the harsh conditions and in extended physical isolation, generally for a period of twelve months. Authority is vested in the station leader. He or she has responsibility for the running of the station and has a role in ensuring that laws are complied with. These laws are wide ranging but the focus of Antarctic specific laws is the protection of the environment.

The Law

The legal regime in the Australian Antarctic Territory is relatively complex. The Australian Antarctic Territory Act 1954 (Cwlth) provides the basis for laws of the Territory. This Act provides for the following laws to apply:

- Commonwealth laws expressed to extend to the Territory;
Environmental Crime

- Ordinances made for the Territory under the *Australian Antarctic Territory Act* 1954;
- the laws, other than the criminal laws, in force from time to time in the Australian Capital Territory, so far as they are applicable and not inconsistent with an Ordinance in force in the Territory; and
- the criminal laws in force from time to time in the Jervis Bay Territory and not inconsistent with an Ordinance in force in the Territory.

The complexity of the regime was commented on by the House of Representatives Standing Committee on Legal and Constitutional Affairs in its report *Australian Law in Antarctica* (Australia 1992).

**Environmental Laws**

Laws made expressly for the Australian Antarctic Territory focus on the protection of the environment. Many of these laws flow from international obligations arising from Australia’s participation in the Antarctic Treaty System and are consequently Commonwealth laws enacted specifically for the Antarctic to enable Australia to ratify the international agreements.

Recently, Australia has been instrumental in negotiating a comprehensive environmental protection regime for the Antarctic—The Protocol on Environmental Protection to the Antarctic Treaty. This Protocol (the Madrid Protocol) designates Antarctica as a natural reserve, devoted to peace and science. Most of the obligations arising from this Protocol have now been implemented in Australian law and any that are outstanding should be in place early next year. The obligations flowing from the Protocol range from the need for prior environmental assessment of activities, to a prohibition on mining and the regulation of the disposal of waste. Australia is also a party to the Convention on the Conservation of Antarctic Marine Living Resources, the Convention for the Conservation of Antarctic Seals and the Convention for the Prevention of Pollution from Ships (MARPOL). The following Acts implement these agreements.

*Antarctic Treaty (Environment Protection) Act* 1980 (Cwlth). The key legislation is the *Antarctic Treaty (Environment Protection) Act*. Under this legislation the carrying out of a range of activities which are potentially harmful to the environment are prohibited, although provision is made for some of these activities to be undertaken if a permit is obtained.

The Act provides for prior assessment of activities to identify the impact that they are likely to have on the Antarctic environment and to regulate those activities that are likely to have an adverse impact on the environment. Activities are authorised with conditions that ensure the activity is carried on in a manner that is consistent with environmental principles.

The Act also prohibits certain things which are harmful to the environment from being taken to the Antarctic for example, non-sterile soil, live birds, and polystyrene packaging chips.

The following regulations have been made under the Act:
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**Antarctic Seals Conservation Regulations** (1986)
These regulations provide for protection of seals in Antarctic waters and implements Australia's obligations under the Convention for the Conservation of Antarctic Seals.

These regulations detail procedures in relation to the environmental assessment process as provided for in the Act.

Regulations dealing with waste management are currently being drafted.

**Antarctic Mining Prohibition Act 1991** (Cwlth). This Act provides for the prohibition of mining in the Antarctic with exception being made for scientific research.

**Antarctic Marine Living Resources Conservation Act 1981** (Cwlth). This Act implements Australia's international obligations arising under the Convention on the Conservation of Antarctic Marine Living Resources and prohibits the harvesting and carrying out of research into marine living resources without a permit.

**Protection of the Sea (Prevention of Pollution from Ships) Act 1983** (Cwlth). This Act, which implements MARPOL and designates the Antarctic area as a special area for certain purposes relating to the protection of the sea, also takes into account the obligations arising from Annex IV (the Marine Pollution Annex) of the Protocol on Environmental Protection to the Antarctic Treaty.

**Difficulties in Law Enforcement in the Antarctic**
All of this adds up to a significant degree of protection and control over what can and cannot be done and how it can be done in the Antarctic. However, there are two major difficulties in enforcing environmental laws in the Antarctic—lack of the necessary infrastructure in the Territory, and the fact that Australia's claim to the Australian Antarctic Territory is recognised by only four countries.

**Lack of infrastructure**
In many instances criminal sanctions are imposed for non compliance with environmental laws. However, there is little in the way of the necessary infrastructure to enforce these laws in the Antarctic. There are for instance, no police, police stations, magistrates or courts, and there is no mail during the winter months and no means of personal service.

Station leaders at the three continental stations, Casey, Davis and Mawson, are appointed as inspectors under the **Antarctic Treaty (Environment Protection) Act 1980** (Cwlth). This appointment gives them powers of search and arrest but as there is no proper authority before whom they can be brought, there being no infrastructure, this is not very useful. However, this would not prevent a summons being issued on return to Australia. The Antarctic Marine Living Resources Conservation Act has similar provisions.

Criminal Procedure Ordinances which are currently being drafted will largely overcome these problems. Station leaders are to be made special constables and will be given powers that will enable them to carry out functions normally carried out by police officers. Through electronic communication with a magistrate in the Australian Capital Territory, charges will be able to be laid. The charges will then be heard on
return to Australia. This solves some of the difficulties of not having the necessary
infrastructure in the Territory. However, remembering that the community is small,
about thirty or so people, this does not address the problem of having to live with a
person who has had a summons issued against them as a result of information given to
a magistrate by the leader, or who has been arrested and detained pending charges
being heard on return to Australia. Enforcement action may be counterproductive in
the particular environment, as the functioning of a small community requires
harmonious relations.

Sovereignty

A further difficulty arises at the international level. Under international law Australia is
entitled to apply its law to both Australians and other persons within its Territory, as
well as controlling the activities of Australians anywhere, although it cannot take
enforcement action against its nationals while in the territory of another state.

Australia claims 42 per cent of the Antarctic continent but this claim is recognised
by only four countries. The Antarctic Treaty accommodates this stating that nothing in
the Treaty will be interpreted as a renunciation of a claim and that no new claim will be
entertained. The Treaty system is based on mutual restraint being shown by claimant
states (which claim jurisdiction over foreign nationals in their claimed territory), states
which maintain that they have the basis of a claim but have not asserted a claim, and
non-claimant states (which deny the existence of jurisdictional rights based on
territorial sovereignty in Antarctica). In any dispute with regard to the exercise of
jurisdiction in Antarctica, the Treaty provides that the parties should consult together
with a view to reaching a mutually acceptable solution. In practice, parties act in a way
which is designed to minimise the possibility of disputes occurring.

Australia, however, reserves the right to enforce its laws against foreign nationals
in its Territory and its laws are expressed to apply to foreign nationals with minor
exceptions.

The Treaty also provides that certain personnel remain under the jurisdiction of
their own country, regardless of where they are in Antarctica, while they are exercising
certain specified functions. This only excludes a small number of persons from
Australian law. In general, foreign nationals participating in Australian expeditions are
required to comply with all relevant laws, and their research activities are subject to the
same permit requirements as Australian scientists. The extent to which Australian laws
should be further enforced against foreign nationals, for example, at foreign bases,
raises complex and sensitive issues of sovereignty and jurisdiction. However, the
Antarctic environmental legislation does recognise authorisations issued by other
Treaty parties to their nationals, to carry out activities in the Australian Antarctic
Territory. This exception does not apply to non-Treaty countries.

Compliance

As with other situations, environmental education is the most successful method of
ensuring compliance with the law. Because of the particular difficulties associated with
ensuring compliance with these laws in the Antarctic this becomes all the more
important.

There are, broadly, two classes of persons who visit the Australian Antarctic
Territory:
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- expeditioners who go as part of Australian National Antarctic Research Expeditions (ANARE). These by far account for the largest number of persons in the Antarctic. ANARE expeditions are organised by the Antarctic Division, an agency of the Commonwealth Environment Department; and
- tourists who visit as part of a commercial venture.

Environmental Education of Expeditioners

The environmental education of expeditioners is achieved in a number of ways. These include formal and structured training involving presentation of lectures on specific subjects and dissemination of suitable publications. However, also advocated is the use of less obvious educative methods, such as putting in place an appropriate environmental culture throughout the organisation, and ensuring that the language adopted in operational manuals and practices covered in technical training is consistent with environmental protection objectives. These indirect methods play an important role in achieving positive environmental attitudes and are therefore essential to the effectiveness of the rest of the environmental education process.

To a large extent, the achievement of an "environmental culture in Antarctica" depends on the quality of staff selected for Antarctic service. Accordingly, all applicants for positions with ANARE must satisfy a common selection criterion which requires candidates to "demonstrate concern and respect for the environment". All successful applicants for positions in Antarctica must also sign the ANARE Code of Personal Behaviour which, among other things, specifies compliance with environmental requirements. Attention is drawn in the Code to preservation and conservation of animals and plants, historic sites and monuments, protected areas and minimising impact on the environment.

Formal training for winter and summer staff takes place through lectures on environmental protection procedures on a number of occasions in the period prior to the arrival in Antarctica of expedition staff.

There are two main environmental education lectures for Antarctic personnel. The first is presented at the Antarctic Division headquarters in the opening days of the compulsory training program for winter and summer staff, including scientists and tradespersons. This session embraces the general environmental procedures that apply to all activities in Antarctica as well as the political, legal and historical background to the procedures. Legal requirements, such as permits, are also included.

The second session is presented during the week-long residential training program. For winter personnel this session is conducted in different groups according to which station the expeditioner will be visiting, and thus is directed at teaching the specific environmental procedures that apply to a particular station. The subject matter includes, for example, specific waste management practices at each station, protected areas in the region, procedures relating to station management plans, and other regional environmental issues.

Station leaders and station environment officers (there is one of each at each station) have an important educative role once expeditioners are in Antarctica. For example, regular station environment meetings are held, at which information is exchanged on topical environmental issues. The outcomes of these meetings are transmitted to head office and station leaders have an obligation to include environmental issues in their monthly report. Likewise, station environment officers must produce regular reports. In addition, there are frequent communications from
head office, including administrative circulars and instructions relayed directly to stations.

From time to time the Antarctic Division prepares special guidelines that apply to particular activities. For example, the Antarctic Environment Committee has approved guidelines on how to behave at penguin colonies, covering different species and breeding times. The Environmental Guidelines for Antarctic Helicopter Operations relate to the use of helicopters in all Antarctic operations, especially near protected or sensitive areas.

The Antarctic Division has also developed environmental educative materials for the use of both expeditioners and tourists. A Heard Island Minimum Impact Code and codes of behaviour for non-government visitors to the Antarctic continent have been provided to tour operators and private expeditioners. Guidelines for visitors for activities at Cape Denison Historic Site, which includes Mawson's hut, appear on the map for that area which is provided to all visitors.

Maps produced by the Antarctic Division contain environmental information that includes the location of bird and seal colonies and the provisions of any relevant management plans. These maps, intended for use in the field by expedition personnel and for planning activities at head office, are publicly available.

The Antarctic Division reviews the content and structure of the expeditioner training program each year and the program is modified as required.

Tourism and Environmental Education

Recent national and international attention on Antarctica has focused on environmental protection and tourism. Non-government activity has been relatively low until lately, and so far protective measures have primarily been aimed at government activities. However, growing tourism now contributes more visitors to Antarctica than government expeditions, creating further problems. The Antarctic Treaty parties are currently addressing issues such as the presence of nationals of a number of different countries, some of whom are not members of the Treaty, and problems of jurisdiction over vessels which are not registered in a Treaty party country.

Australia and other Treaty parties have placed strong emphasis on educating visitors to Antarctica, rather than relying on the enforcement of management measures alone. In common with other parties, Australian resources in Antarctica are limited in their extent and geographic distribution, and are almost entirely devoted to the conduct of national Antarctic scientific programs. Given the additional difficulty of travelling in Antarctica and the disruption to scientific programs that would occur with diverting resources to enforcement, it is easy to see why so much emphasis is placed on education.

Australia advises the organisers of all non-government activities in Antarctica of their responsibilities and obligations under Australian law and the Antarctic Treaty system, which comprises the Antarctic Treaty and other associated measures including recommendations agreed to at Treaty Consultative Meetings and the more recent Protocol on Environmental Protection to the Antarctic Treaty. The information provided covers:

- operational aspects—such as the need to avoid undue disruption to national Antarctic programs, communications, advice on equipment, and conditions for visiting Australian or other Antarctic stations;
- safety aspects—including the need for self-sufficiency and insurance; and
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- environmental matters—such as waste disposal, environmental impact assessment of the proposed activities, guidelines for visitors to protected areas and measures for the conservation of flora and fauna.

Additional information, such as which permits are required to undertake certain activities or visit protected areas, is tailored to the proposed itinerary or activities. Where possible, all information is provided well before the activity commences and there are usually several contacts between activity organisers and Australian authorities.

As a result of the increasing levels of tourists and non-government activities the efficient delivery of high quality information is required. The Australian Antarctic Division is presently examining ways to improve existing procedures. Other management strategies are likely to be needed in the future and could include the use of official shipboard observers, now regularly employed by other Treaty parties in Antarctic areas with higher levels of tourist activity, to ensure that tourism is conducted appropriately and to better educate participants.

Tourism, so far, has a good track record. People visiting the Antarctic are aware of its special value and this is usually reinforced with talks given by specialists on board the cruise ships.

Other

Education plays a large role in ensuring compliance with environmental laws. However, other measures, both legislative and administrative, are also important. The ability to cancel permits in certain circumstances, or the possibility of being rejected as an expeditioner on future occasions also help ensure compliance. Public scrutiny of ANARE activities by non-government organisations is another means of ensuring compliance and not only do these organisations carry out voyages to observe government activities but often a non-government organisation representative joins an ANARE voyage.

Summary

Enforcement of environmental laws in Antarctica is difficult but so far compliance is relatively high. Environmental education is the key tool for ensuring compliance. Part of the educational strategy is to instil in Antarctic visitors the notion that visiting Antarctica is a rare privilege, carrying with it an important obligation to protect the environment.

Reference


**POSTSCRIPT**

Tourism

At the 18th Antarctic Treaty Consultative Meeting in April 1994, parties agreed to a recommendation that provides for the circulation of guidelines for both those visiting the Antarctic and those organising and conducting tourism in the Antarctic. The guidelines are to ensure that tourist activities do not have adverse impacts on the Antarctic environment, or on its scientific and aesthetic values.

This paper refers to legislation which was then being drafted. This has now been finalised.
These regulations relate to the management and disposal of waste. In particular, persons must consider waste minimisation and recycling in planning activities in the Antarctic. Certain wastes which are potentially harmful to the environment must also be removed as proper facilities do not exist for the disposal of such waste.

**Criminal Procedures Ordinance (1993)**
As stated in the paper, one of the major difficulties in enforcing laws in the Antarctic is the lack of enforcement infrastructure in the Territory. This has been partially overcome by certain designated officials being given authority to deal with persons who have or who are committing criminal offences. It is now possible to apply for and grant search and arrest warrants, charge suspects, and process bail applications by means of telecommunications with a magistrate of the Australian Capital Territory. While a person can now be held in custody in the Territory, it will still be necessary for the charges to be heard in Australia. Provision has been made for the removal of such persons to Australia to enable this to be carried out.

However, while this enables the law to be enforced, the preferable course of action is to prevent violation of such laws and educational programs continue to be developed, particularly in relation to environmental laws.