



# **Antarctic Treaty (Environment Protection) Amendment Act 2012**

**No. 90, 2012**

***An Act to amend the *Antarctic Treaty (Environment Protection) Act 1980*, and for other purposes***

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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# Antarctic Treaty (Environment Protection) Amendment Act 2012

No. 90, 2012

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## **An Act to amend the *Antarctic Treaty (Environment Protection) Act 1980*, and for other purposes**

[Assented to 28 June 2012]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Antarctic Treaty (Environment Protection) Amendment Act 2012*.

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	28 June 2012
2. Schedule 1, Part 1	The earlier of: (a) a single day to be fixed by Proclamation; and (b) the day Measure 4 (2004), adopted by the XXVIIth Antarctic Treaty Consultative Meeting at Cape Town on 4 June 2004, comes into force for Australia.  The Minister must announce by notice in the <i>Gazette</i> the day the Measure comes into force for Australia.	
3. Schedule 1, Parts 2 and 3	The later of: (a) immediately after the commencement of the provision(s) covered by table item 9; and (b) immediately after Measure 4 (2004), adopted by the XXVIIth Antarctic Treaty Consultative Meeting at Cape Town on 4 June 2004, comes into force for Australia.  However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.  The Minister must announce by notice in the <i>Gazette</i> the day the Measure comes into force for Australia.	

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
4. Schedule 2, Part 1	<p>The earlier of:</p> <p>(a) a single day to be fixed by Proclamation; and</p> <p>(b) the day Annex VI to the Madrid Protocol, attached to Measure 1 (2005) adopted by the XXVIIIth Antarctic Treaty Consultative Meeting at Stockholm on 17 June 2005, comes into force for Australia.</p> <p>The Minister must announce by notice in the <i>Gazette</i> the day the Annex comes into force for Australia.</p>	
5. Schedule 2, Part 2	<p>The later of:</p> <p>(a) immediately after the commencement of the provision(s) covered by table item 9; and</p> <p>(b) immediately after Annex VI to the Madrid Protocol, attached to Measure 1 (2005) adopted by the XXVIIIth Antarctic Treaty Consultative Meeting at Stockholm on 17 June 2005, comes into force for Australia.</p> <p>However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.</p> <p>The Minister must announce by notice in the <i>Gazette</i> the day the Annex comes into force for Australia.</p>	
6. Schedule 2, Part 3	<p>The later of:</p> <p>(a) immediately after the commencement of the provision(s) covered by table item 3; and</p> <p>(b) the start of the day Annex VI to the Madrid Protocol, attached to Measure 1 (2005) adopted by the XXVIIIth Antarctic Treaty Consultative Meeting at Stockholm on 17 June 2005, comes into force for Australia.</p>	

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
	<p>However, the provision(s) do not commence at all unless both of the events mentioned in paragraphs (a) and (b) occur.</p> <p>The Minister must announce by notice in the <i>Gazette</i> the day the Annex comes into force for Australia.</p>	
7. Schedule 2, Part 4	At the same time as the provision(s) covered by table item 5.	
8. Schedule 3	<p>The later of:</p> <p>(a) the day after this Act receives the Royal Assent; and</p> <p>(b) the day Measure 15 (2009), adopted by the XXXIInd Antarctic Treaty Consultative Meeting at Baltimore on 17 April 2009, comes into force for Australia.</p> <p>However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.</p> <p>The Minister must announce by notice in the <i>Gazette</i> the day the Measure comes into force for Australia.</p>	
9. Schedule 4	The day after this Act receives the Royal Assent.	29 June 2012

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

### 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.



## **Schedule 1—Implementation of Measure 4 (2004)**

### **Part 1—Safety approvals**

#### *Antarctic Treaty (Environment Protection) Act 1980*

##### **1 Subsection 3(1)**

Insert:

*non-State operator* means a person who is not a Contracting Party to the Treaty.

##### **2 Subsection 3(1)**

Insert:

*safety approval* means a safety approval granted under section 13AC.

##### **3 After Part 3**

Insert:

### **Part 3A—Safety approvals**

#### **Division 1—Introduction**

##### **13AA Simplified outline**

The following is a simplified outline of this Part:

This Part deals with safety approvals.

A non-State operator may apply for a safety approval in relation to an activity (other than a mining activity) to be carried on in the Antarctic.

The Minister may grant the approval if the Minister is satisfied that the operator has or will have certain contingency plans, and insurance or other arrangements, in relation to the activity.

Mandatory conditions relating to those matters are imposed on all safety approvals and those conditions cannot be varied or revoked. The Minister may also impose further conditions on a safety approval, and may vary or revoke those conditions.

If the Minister is satisfied that it is necessary to do so, the Minister may vary a safety approval on his or her own initiative or at the request of the holder of the approval.

The Minister may suspend or revoke a safety approval if the Minister is satisfied that there has been non-compliance with the conditions imposed on the approval or that the suspension or revocation is appropriate in all the circumstances.

The Minister must cause a register of safety approvals to be kept.

## **Division 2—Obtaining a safety approval**

### **13AB Application for safety approval**

- (1) A non-State operator may apply to the Minister for a safety approval in relation to an activity (other than a mining activity) that is to be carried on in the Antarctic.
- (2) The application must be in the form approved, in writing, by the Minister.

#### *Request for further information*

- (3) The Minister may, by written notice, request the applicant to give the Minister, within the period specified in the notice, further information in relation to the application.
- (4) If:
  - (a) a request is made under subsection (3); and
  - (b) the applicant does not give the requested information within the period specified in the notice;

the Minister may refuse to grant the safety approval under section 13AC.

*Withdrawal of application*

- (5) An applicant may, by written notice given to the Minister, withdraw the application at any time before the Minister makes a decision on the application.

**13AC Grant of safety approval**

- (1) If a non-State operator applies for a safety approval under section 13AB in relation to an activity, the Minister may grant the approval.
- (2) The Minister must not grant the approval unless the Minister is satisfied that:
  - (a) the operator has an appropriate contingency plan, and sufficient arrangements, for health and safety, search and rescue, and medical care and evacuation in relation to the activity; and
  - (b) the operator has or will have adequate insurance, or other arrangements, that will cover any costs associated with search and rescue, and medical care and evacuation, in relation to the activity.

**13AD Notice of decision**

*Notice of grant*

- (1) If the Minister grants a non-State operator a safety approval under section 13AC in relation to an activity, the Minister must give written notice of the decision to the operator.
- (2) The notice must set out:
  - (a) the name of the operator; and
  - (b) the nature of the activity; and
  - (c) the conditions imposed under section 13AE; and
  - (d) any other conditions imposed under section 13AF at the time of the grant; and
  - (e) any other matters relating to the approval that the Minister considers appropriate.

*Notice of refusal*

- (3) If the Minister refuses to grant a non-State operator a safety approval under section 13AC, the Minister must give the person written notice of the decision and the reasons for the decision.

### **Division 3—Conditions of safety approvals**

#### **13AE Mandatory conditions**

If the Minister grants a non-State operator a safety approval under section 13AC in relation to an activity, the following conditions are imposed on the approval:

- (a) a condition that the operator must have an appropriate contingency plan, and sufficient arrangements, for health and safety, search and rescue, and medical care and evacuation in relation to the activity;
- (b) a condition that the operator must have adequate insurance, or other arrangements, that will cover any costs associated with search and rescue, and medical care and evacuation, in relation to the activity.

#### **13AF Imposition, variation and revocation of conditions**

- (1) Subject to subsection (5), the Minister may at any time:
  - (a) impose conditions, or additional conditions, on a safety approval; or
  - (b) vary or revoke conditions imposed on a safety approval (other than the conditions imposed under section 13AE).
- (2) The Minister's power under subsection (1) may be exercised:
  - (a) on the Minister's own initiative; or
  - (b) at the request of the holder of a safety approval.

*Request that condition be imposed etc.*

- (3) The holder of a safety approval may request the Minister to impose a condition on, or to vary or revoke a condition imposed on, the approval.
  - (4) The request must be made in writing and set out the reasons for the making of the request.
-

- (5) If a request is made under subsection (3), the Minister must not impose a condition on, or vary or revoke a condition imposed on, the safety approval unless the Minister is satisfied that the reasons set out in the request justify the imposition, variation or revocation.

*Notice of decision etc.*

- (6) If the Minister imposes a condition on, or varies or revokes a condition imposed on, a safety approval after it is granted:
- (a) the Minister must give the holder of the approval written notice of the imposition, variation or revocation; and
  - (b) the imposition, variation or revocation takes effect on the day specified in the notice (which must be at least 5 days after the day on which the notice is given).
- (7) If:
- (a) the holder of a safety approval makes a request under subsection (3); and
  - (b) the Minister refuses to comply with the request;
- the Minister must give the holder written notice of the decision and the reasons for the decision.

## **Division 4—Variation, suspension and revocation of safety approvals**

### **13AG Variation of safety approval**

*Variation on Minister's own initiative*

- (1) The Minister may, on the Minister's own initiative, vary a safety approval if the Minister is satisfied that it is necessary to do so.

*Request for variation*

- (2) The holder of a safety approval may request the Minister to vary the approval.
- (3) The request must be made in writing and set out the reasons for the making of the request.

- (4) If a request is made under subsection (2), the Minister may vary the safety approval if the Minister is satisfied that the reasons set out in the request justify the variation.

*Notice of decision etc.*

- (5) If a safety approval is varied under subsection (1) or (4):
- (a) the Minister must give the holder of the approval written notice of the variation; and
  - (b) the variation takes effect on the day specified in the notice (which must be at least 5 days after the day on which the notice is given).
- (6) If:
- (a) the holder of a safety approval makes a request under subsection (2); and
  - (b) the Minister refuses to comply with the request;
- the Minister must give the holder written notice of the decision and the reasons for the decision.

### **13AH Suspension or revocation of safety approval**

- (1) The Minister may, by written notice given to the holder of a safety approval, suspend or revoke the approval if:
- (a) the Minister is satisfied that a condition imposed on the approval has not been, or is not being, complied with; or
  - (b) the Minister considers the suspension or revocation is appropriate in all the circumstances.

*When suspension or revocation takes effect*

- (2) If a safety approval is suspended or revoked under subsection (1), the suspension or revocation takes effect on the day specified in the notice (which must be at least 5 days after the day on which the notice is given).

*Period of suspension etc.*

- (3) If a safety approval is suspended under subsection (1), the notice must specify the period of suspension (which must not be longer than 90 days after the day on which the suspension takes effect).

- (4) If:
- (a) a safety approval in relation to an activity is suspended under subsection (1); and
  - (b) proceedings relating to either of the following are started while the approval is suspended:
    - (i) an offence against this Act that relates to the carrying on of the activity;
    - (ii) a contravention of a civil penalty provision that relates to the carrying on of the activity;
- then, despite subsection (3), the period of suspension continues until the proceedings (including any appeal) are completed.
- (5) The suspension of a safety approval does not prevent its revocation.

## **Division 6—Miscellaneous**

### **13AK Register**

- (1) The Minister must cause to be kept a register of safety approvals granted under this Act.
- (2) The register must include the following information about a safety approval:
  - (a) the name of the holder of the approval;
  - (b) the nature of the activity to which the approval relates;
  - (c) the conditions imposed on the approval;
  - (d) any other information prescribed by the regulations.
- (3) The register must be kept in electronic form.
- (4) The regulations may make provision for, or in relation to, the register.

### **13AL Monitoring of activity**

The regulations may provide for the monitoring of an activity in relation to which a safety approval has been granted.

### **4 After subsection 28(1A)**

Insert:

(1B) Applications may be made to the Administrative Appeals Tribunal for review of the following decisions of the Minister:

- (a) a decision under subsection 13AC(1) to refuse to grant a safety approval;
- (b) a decision under paragraph 13AF(1)(a) to impose, or to refuse to impose, conditions on a safety approval;
- (c) a decision under paragraph 13AF(1)(b) to vary or revoke, or to refuse to vary or revoke, conditions imposed on a safety approval;
- (d) a decision under subsection 13AG(1) to vary a safety approval;
- (e) a decision under subsection 13AG(4) to refuse to vary a safety approval;
- (f) a decision under subsection 13AH(1) to suspend or revoke a safety approval.

**5 After paragraph 29(2)(ac)**

Insert:

- (ad) providing for:
  - (i) the payment of a fee in the amount, or at the rate, fixed by or calculated under the regulations in respect of the processing of an application for a safety approval, or the grant of the approval; and
  - (ii) the refund of the fee; and



## **Part 2—Other amendments**

### ***Antarctic Treaty (Environment Protection) Act 1980***

#### **6 After subsection 9(2B)**

Insert:

- (2C) If a person is a non-State operator, the Minister must not grant the person a permit authorising an activity unless the person holds a safety approval in relation to the activity.

#### **7 Section 13AA (before the last paragraph)**

Insert:

<p>A person must not carry on an activity in the Antarctic unless the non-State operator who organises the activity holds a safety approval. The conditions imposed on the approval must be complied with.</p>
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#### **8 After Division 4 of Part 3A**

Insert:

### **Division 5—Offences etc. relating to safety approvals**

#### **13AI Activity must not be carried on without safety approval**

- (1) A non-State operator contravenes this subsection if:
- (a) the operator organises an activity to be carried on in the Antarctic; and
  - (b) a person carries on the activity at a particular time; and
  - (c) at that time, the operator does not hold a safety approval in relation to the activity.
- (2) A person contravenes this subsection if:
- (a) the person carries on an activity in the Antarctic at a particular time; and
  - (b) the activity was organised by a non-State operator; and

(c) at that time, the operator does not hold a safety approval in relation to the activity.

(3) Subsections (1) and (2) do not apply if:

(a) the activity is carried on in an emergency:

(i) to save a person from death or serious injury; or

(ii) to secure the safety of a ship or aircraft, or the safety of equipment or facilities of high value; or

(iii) to protect the environment; or

(b) the non-State operator is authorised to carry on the activity under a law of a Contracting Party.

*Offence*

(4) A person commits an offence if the person contravenes subsection (1) or (2). The physical elements of the offences are set out in those subsections.

Penalty: Imprisonment for 7 years or 420 penalty units, or both.

Note: The defendant bears an evidential burden in relation to the matters in subsection (3). See subsection 13.3(3) of the *Criminal Code*.

*Civil penalty provision*

(5) A person is liable to a civil penalty if the person contravenes subsection (1) or (2).

Civil penalty: 1,000 penalty units.

Note: It is not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision, except in limited circumstances (see section 22N).

(6) A person who wishes to rely on subsection (3) in proceedings for a civil penalty order bears an evidential burden in relation to the matters in that subsection.

**13AJ Non-compliance with conditions**

(1) A non-State operator contravenes this subsection if:

(a) the operator holds a safety approval in relation to an activity;  
and

(b) a person carries on the activity; and

- (c) the conditions imposed on the approval are not complied with.
- (2) Subsection (1) does not apply if:
- (a) the activity is carried on in an emergency:
    - (i) to save a person from death or serious injury; or
    - (ii) to secure the safety of a ship or aircraft, or the safety of equipment or facilities of high value; or
    - (iii) to protect the environment; or
  - (b) the non-State operator is authorised to carry on the activity under a law of a Contracting Party.

*Offence*

- (3) A non-State operator commits an offence if the operator contravenes subsection (1). The physical elements of the offence are set out in that subsection.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

Note: The defendant bears an evidential burden in relation to the matters in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

*Civil penalty provision*

- (4) A non-State operator is liable to a civil penalty if the operator contravenes subsection (1).

Civil penalty: 500 penalty units.

Note: It is not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision, except in limited circumstances (see section 22N).

- (5) A non-State operator who wishes to rely on subsection (2) in proceedings for a civil penalty order bears an evidential burden in relation to the matters in that subsection.

## **9 After subsection 17(4)**

Insert:

- (4A) An inspector may require any person whom he or she finds carrying on, or whom he or she reasonably suspects of having carried on, an activity in respect of which a non-State operator is required to hold a safety approval to produce:

**Schedule 1** Implementation of Measure 4 (2004)

**Part 2** Other amendments

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- (a) the approval; or
- (b) evidence of the existence and contents of the approval.

## **Part 3—Application provisions**

### **10 Application—pre-commencement applications for a permit**

- (1) This item applies if:
  - (a) an application under subsection 9(1) of the *Antarctic Treaty (Environment Protection) Act 1980* was made before the commencement of this item; and
  - (b) the Minister did not make a decision on the application before that commencement.
- (2) Subsection 9(2C) of that Act, as inserted by Part 2 of this Schedule, applies in relation to the application.

### **11 Application—offences etc. relating to safety approvals**

Sections 13AI and 13AJ of the *Antarctic Treaty (Environment Protection) Act 1980*, as inserted by Part 2 of this Schedule, apply in relation to an activity carried on in the Antarctic after the commencement of this item.

## Schedule 2—Implementation of Annex VI to the Madrid Protocol

### Part 1—Environmental protection approvals

#### *Antarctic Treaty (Environment Protection) Act 1980*

##### 1 Subsection 3(1)

Insert:

*environmental emergency* means an event that results in, or imminently threatens to result in, any significant and harmful impact on the Antarctic environment.

##### 2 Subsection 3(1)

Insert:

*environmental protection approval* means an environmental protection approval granted under section 13BC.

##### 3 Subsection 3(1) (definition of *Madrid Protocol*)

Omit all the words after “4 October 1991”, substitute:

and to which:

- (a) in accordance with Recommendation XVI-10 adopted by the XVIth Antarctic Treaty Consultative Meeting at Bonn on 18 October 1991, the Annex attached to that Recommendation has been added as Annex V to the Protocol; and
- (b) in accordance with Measure 1 (2005) adopted by the XXVIIIth Antarctic Treaty Consultative Meeting at Stockholm on 17 June 2005, the Annex attached to that Measure has been added as Annex VI to the Protocol.

##### 4 Subsection 3(1)

Insert:

*operator* means a person who organises, or intends to organise, an activity to be carried on in the Antarctic but does not include:

- (a) if the person is a Party to the Madrid Protocol—a contractor or subcontractor acting on behalf of the person if the contractor or subcontractor is not an individual; or
- (b) otherwise—an individual who:
  - (i) is an employee, contractor, subcontractor or agent of the person; or
  - (ii) is in the service of the person.

## **5 Subsection 3(1)**

Insert:

*reasonable preventative measures* means preventative measures which are:

- (a) appropriate, practicable and proportionate; and
- (b) based on the availability of objective criteria and information, including information about:
  - (i) the risks to the Antarctic environment, and the rate of its natural recovery; and
  - (ii) the risks to human life and safety; and
  - (iii) technological and economic feasibility.

## **6 Before Part 4**

Insert:

# **Part 3B—Environmental protection approvals**

## **Division 1—Introduction**

### **13BA Simplified outline**

The following is a simplified outline of this Part:

This Part deals with environmental protection approvals.

An operator may apply for an environmental protection approval in relation to an activity (other than a mining activity) to be carried on in the Antarctic.

The Minister may grant the approval if the Minister is satisfied that the operator meets certain requirements in relation to the activity.

Mandatory conditions relating to those requirements are imposed on all environmental protection approvals and those conditions cannot be varied or revoked. The Minister may also impose further conditions on an environmental protection approval, and may vary or revoke those conditions.

If the Minister is satisfied that it is necessary to do so, the Minister may vary an environmental protection approval on his or her own initiative or at the request of the holder of the approval.

The Minister may suspend or revoke an environmental protection approval if the Minister is satisfied that there has been non-compliance with the conditions imposed on the approval or that the suspension or revocation is appropriate in all the circumstances.

The Minister must cause a register of environmental protection approvals to be kept.

## **Division 2—Obtaining an environmental protection approval**

### **13BB Application for environmental protection approval**

- (1) An operator may apply to the Minister for an environmental protection approval in relation to an activity (other than a mining activity) that is to be carried on in the Antarctic.
- (2) The application must be in the form approved, in writing, by the Minister.

#### *Request for further information*

- (3) The Minister may, by written notice, request the applicant to give the Minister, within the period specified in the notice, further information in relation to the application.
- (4) If:
  - (a) a request is made under subsection (3); and



(b) the applicant does not give the requested information within the period specified in the notice;  
the Minister may refuse to grant the environmental protection approval under section 13BC.

*Withdrawal of application*

- (5) An applicant may, by written notice given to the Minister, withdraw the application at any time before the Minister makes a decision on the application.

**13BC Grant of environmental protection approval**

- (1) If an operator applies for an environmental protection approval under section 13BB in relation to an activity, the Minister may grant the approval.
- (2) The Minister must not grant the approval unless the Minister is satisfied that:
- (a) the operator has undertaken or will undertake reasonable preventative measures designed to reduce:
    - (i) the risk of environmental emergencies arising from the activity; and
    - (ii) the potential adverse impact of environmental emergencies arising from the activity; and
  - (b) the operator has an appropriate contingency plan for responding to incidents with potential adverse impact on the Antarctic environment, or dependent and associated eco-systems, that arise from the activity; and
  - (c) the operator has or will have the insurance, or other financial security, that is referred to in Articles 11(1) and (2) of Annex VI to the Madrid Protocol up to the limits referred to in those Articles.

**13BD Notice of decision**

*Notice of grant*

- (1) If the Minister grants an operator an environmental protection approval under section 13BC in relation to an activity, the Minister must give written notice of the decision to the operator.

- (2) The notice must set out:
- (a) the name of the operator; and
  - (b) the nature of the activity; and
  - (c) the conditions imposed under section 13BE; and
  - (d) any other conditions imposed under section 13BF at the time of the grant; and
  - (e) any other matters relating to the approval that the Minister considers appropriate.

*Notice of refusal*

- (3) If the Minister refuses to grant an operator an environmental protection approval under section 13BC, the Minister must give the operator written notice of the decision and the reasons for the decision.

### **Division 3—Conditions of environmental protection approvals**

#### **13BE Mandatory conditions**

If the Minister grants an operator an environmental protection approval under section 13BC in relation to an activity, the following conditions are imposed on the approval:

- (a) a condition that the operator must undertake reasonable preventative measures designed to reduce:
  - (i) the risk of environmental emergencies arising from the activity; and
  - (ii) the potential adverse impact of environmental emergencies arising from the activity;
- (b) a condition that the operator must have an appropriate contingency plan for responding to incidents with potential adverse impact on the Antarctic environment, or dependent and associated eco-systems, that arise from the activity;
- (c) a condition that the operator must have the insurance, or other financial security, that is referred to in Articles 11(1) and (2) of Annex VI to the Madrid Protocol up to the limits referred to in those Articles.

### **13BF Imposition, variation and revocation of conditions**

- (1) Subject to subsection (5), the Minister may at any time:
  - (a) impose conditions, or additional conditions, on an environmental protection approval; or
  - (b) vary or revoke conditions imposed on an environmental protection approval (other than the conditions imposed under section 13BE).
- (2) The Minister's power under subsection (1) may be exercised:
  - (a) on the Minister's own initiative; or
  - (b) at the request of the holder of an environmental protection approval.

*Request that condition be imposed etc.*

- (3) The holder of an environmental protection approval may request the Minister to impose a condition on, or to vary or revoke a condition imposed on, the approval.
- (4) The request must be made in writing and set out the reasons for the making of the request.
- (5) If a request is made under subsection (3), the Minister must not impose a condition on, or vary or revoke a condition imposed on, the environmental protection approval unless the Minister is satisfied that the reasons set out in the request justify the imposition, variation or revocation.

*Notice of decision etc.*

- (6) If the Minister imposes a condition on, or varies or revokes a condition imposed on, an environmental protection approval after it is granted:
  - (a) the Minister must give the holder of the approval written notice of the imposition, variation or revocation; and
  - (b) the imposition, variation or revocation takes effect on the day specified in the notice (which must be at least 5 days after the day on which the notice is given).
- (7) If:
  - (a) the holder of an environmental protection approval makes a request under subsection (3); and

- (b) the Minister refuses to comply with the request; the Minister must give the holder written notice of the decision and the reasons for the decision.

## **Division 4—Variation, suspension and revocation of environmental protection approvals**

### **13BG Variation of environmental protection approval**

#### *Variation on the Minister's own initiative*

- (1) The Minister may, on the Minister's own initiative, vary an environmental protection approval if the Minister is satisfied that it is necessary to do so.

#### *Request for variation*

- (2) The holder of an environmental protection approval may request the Minister to vary the approval.
- (3) The request must be made in writing and set out the reasons for the making of the request.
- (4) If a request is made under subsection (2), the Minister may vary the environmental protection approval if the Minister is satisfied that the reasons set out in the request justify the variation.

#### *Notice of decision etc.*

- (5) If an environmental protection approval is varied under subsection (1) or (4):
  - (a) the Minister must give the holder of the approval written notice of the variation; and
  - (b) the variation takes effect on the day specified in the notice (which must be at least 5 days after the day on which the notice is given).
- (6) If:
  - (a) the holder of an environmental protection approval makes a request under subsection (2); and
  - (b) the Minister refuses to comply with the request;

the Minister must give the holder written notice of the decision and the reasons for the decision.

### **13BH Suspension or revocation of environmental protection approval**

- (1) The Minister may, by written notice given to the holder of an environmental protection approval, suspend or revoke the approval if:
  - (a) the Minister is satisfied that a condition imposed on the approval has not been, or is not being, complied with; or
  - (b) the Minister considers the suspension or revocation is appropriate in all the circumstances.

*When suspension or revocation takes effect*

- (2) If an environmental protection approval is suspended or revoked under subsection (1), the suspension or revocation takes effect on a day specified in the notice (which must be at least 5 days after the day on which the notice is given).

*Period of suspension etc.*

- (3) If an environmental protection approval is suspended under subsection (1), the notice must specify the period of suspension (which must not be longer than 90 days after the day on which the suspension takes effect).
- (4) If:
  - (a) an environmental protection approval in relation to an activity is suspended under subsection (1); and
  - (b) proceedings relating to either of the following are started while the approval is suspended:
    - (i) an offence against this Act that relates to the carrying on of the activity;
    - (ii) a contravention of a civil penalty provision that relates to the carrying on of the activity;then, despite subsection (3), the period of suspension continues until the proceedings (including any appeal) are completed.
- (5) The suspension of an environmental protection approval does not prevent its revocation.

## **Division 6—Miscellaneous**

### **13BK Register**

- (1) The Minister must cause to be kept a register of environmental protection approvals granted under this Part.
- (2) The register must include the following information about an environmental protection approval:
  - (a) the name of the holder of the approval;
  - (b) the nature of the activity to which the approval relates;
  - (c) the conditions imposed on the approval;
  - (d) any other information prescribed by the regulations.
- (3) The register must be kept in electronic form.
- (4) The regulations may make provision for, or in relation to, the register.

### **13BL Monitoring of activity**

The regulations may provide for the monitoring of an activity in relation to which an environmental protection approval has been granted.

## **7 Before subsection 28(2)**

Insert:

- (1C) Applications may be made to the Administrative Appeals Tribunal for review of the following decisions of the Minister:
  - (a) a decision under subsection 13BC(1) to refuse to grant an environmental protection approval;
  - (b) a decision under paragraph 13BF(1)(a) to impose, or to refuse to impose, conditions on an environmental protection approval;
  - (c) a decision under paragraph 13BF(1)(b) to vary or revoke, or to refuse to vary or revoke, conditions imposed on an environmental protection approval;
  - (d) a decision under subsection 13BG(1) to vary an environmental protection approval;

- (e) a decision under subsection 13BG(4) to refuse to vary an environmental protection approval;
- (f) a decision under subsection 13BH(1) to suspend or revoke an environmental protection approval.

## **8 Before paragraph 29(2)(b)**

Insert:

- (ae) providing for:
  - (i) the payment of a fee in the amount, or at the rate, fixed by or calculated under the regulations in respect of the processing of an application for an environmental protection approval, or the grant of the approval; and
  - (ii) the refund of the fee; and

## **9 At the end of Schedule 3**

Add:

### **ANNEX VI TO THE PROTOCOL ON ENVIRONMENTAL PROTECTION TO THE ANTARCTIC TREATY**

#### **LIABILITY ARISING FROM ENVIRONMENTAL EMERGENCIES**

##### *Preamble*

The Parties,

*Recognising* the importance of preventing, minimising and containing the impact of environmental emergencies on the Antarctic environment and dependent and associated ecosystems;

*Recalling* Article 3 of the Protocol, in particular that activities shall be planned and conducted in the Antarctic Treaty area so as to accord priority to scientific research and to preserve the value of Antarctica as an area for the conduct of such research;

*Recalling* the obligation in Article 15 of the Protocol to provide for prompt and effective response action to environmental emergencies, and to establish contingency plans for response to incidents with potential adverse effects on the Antarctic environment or dependent and associated ecosystems;

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*Recalling* Article 16 of the Protocol under which the Parties to the Protocol undertook consistent with the objectives of the Protocol for the comprehensive protection of the Antarctic environment and dependent and associated ecosystems to elaborate, in one or more Annexes to the Protocol, rules and procedures relating to liability for damage arising from activities taking place in the Antarctic Treaty area and covered by the Protocol;

*Noting* further Decision 3 (2001) of the XXIVth Antarctic Treaty Consultative Meeting regarding the elaboration of an Annex on the liability aspects of environmental emergencies, as a step in the establishment of a liability regime in accordance with Article 16 of the Protocol;

*Having regard to* Article IV of the Antarctic Treaty and Article 8 of the Protocol;

**Have agreed** as follows:

*Article 1*

**Scope**

This Annex shall apply to environmental emergencies in the Antarctic Treaty area which relate to scientific research programmes, tourism and all other governmental and nongovernmental activities in the Antarctic Treaty area for which advance notice is required under Article VII(5) of the Antarctic Treaty, including associated logistic support activities. Measures and plans for preventing and responding to such emergencies are also included in this Annex. It shall apply to all tourist vessels that enter the Antarctic Treaty area. It shall also apply to environmental emergencies in the Antarctic Treaty area which relate to other vessels and activities as may be decided in accordance with Article 13.

*Article 2*

**Definitions**

For the purposes of this Annex:

- (a) “Decision” means a Decision adopted pursuant to the Rules of Procedure of Antarctic Treaty Consultative Meetings and referred to in Decision 1 (1995) of the XIXth Antarctic Treaty Consultative Meeting;



(b) “Environmental emergency” means any accidental event that has occurred, having taken place after the entry into force of this Annex, and that results in, or imminently threatens to result in, any significant and harmful impact on the Antarctic environment;

(c) “Operator” means any natural or juridical person, whether governmental or nongovernmental, which organises activities to be carried out in the Antarctic Treaty area. An operator does not include a natural person who is an employee, contractor, subcontractor, or agent of, or who is in the service of, a natural or juridical person, whether governmental or non-governmental, which organises activities to be carried out in the Antarctic Treaty area, and does not include a juridical person that is a contractor or subcontractor acting on behalf of a State operator;

(d) “Operator of the Party” means an operator that organises, in that Party’s territory, activities to be carried out in the Antarctic Treaty area, and:

(i) those activities are subject to authorisation by that Party for the Antarctic Treaty area; or

(ii) in the case of a Party which does not formally authorise activities for the Antarctic Treaty area, those activities are subject to a comparable regulatory process by that Party.

The terms “its operator”, “Party of the operator”, and “Party of that operator” shall be interpreted in accordance with this definition;

(e) “Reasonable”, as applied to preventative measures and response action, means measures or actions which are appropriate, practicable, proportionate and based on the availability of objective criteria and information, including:

(i) risks to the Antarctic environment, and the rate of its natural recovery;

(ii) risks to human life and safety; and

(iii) technological and economic feasibility;

(f) “Response action” means reasonable measures taken after an environmental emergency has occurred to avoid, minimise or contain the impact of that environmental emergency, which to that end may include clean-up in

appropriate circumstances, and includes determining the extent of that emergency and its impact;

(g) “The Parties” means the States for which this Annex has become effective in accordance with Article 9 of the Protocol.

### *Article 3*

#### **Preventative Measures**

1. Each Party shall require its operators to undertake reasonable preventative measures that are designed to reduce the risk of environmental emergencies and their potential adverse impact.
2. Preventative measures may include:
  - (a) specialised structures or equipment incorporated into the design and construction of facilities and means of transportation;
  - (b) specialised procedures incorporated into the operation or maintenance of facilities and means of transportation; and
  - (c) specialised training of personnel.

### *Article 4*

#### **Contingency Plans**

1. Each Party shall require its operators to:
  - (a) establish contingency plans for responses to incidents with potential adverse impacts on the Antarctic environment or dependent and associated ecosystems; and
  - (b) co-operate in the formulation and implementation of such contingency plans.
2. Contingency plans shall include, when appropriate, the following components:
  - (a) procedures for conducting an assessment of the nature of the incident;

- (b) notification procedures;
- (c) identification and mobilisation of resources;
- (d) response plans;
- (e) training;
- (f) record keeping; and
- (g) demobilisation.

3. Each Party shall establish and implement procedures for immediate notification of, and co-operative responses to, environmental emergencies, and shall promote the use of notification procedures and co-operative response procedures by its operators that cause environmental emergencies.

### *Article 5*

#### **Response Action**

1. Each Party shall require each of its operators to take prompt and effective response action to environmental emergencies arising from the activities of that operator.
2. In the event that an operator does not take prompt and effective response action, the Party of that operator and other Parties are encouraged to take such action, including through their agents and operators specifically authorised by them to take such action on their behalf.
3.
  - (a) Other Parties wishing to take response action to an environmental emergency pursuant to paragraph 2 above shall notify their intention to the Party of the operator and the Secretariat of the Antarctic Treaty beforehand with a view to the Party of the operator taking response action itself, except where a threat of significant and harmful impact to the Antarctic environment is imminent and it would be reasonable in all the circumstances to take immediate response action, in which case they shall notify the Party of the operator and the Secretariat of the Antarctic Treaty as soon as possible.
  - (b) Such other Parties shall not take response action to an environmental emergency pursuant to paragraph 2 above, unless a

threat of significant and harmful impact to the Antarctic environment is imminent and it would be reasonable in all the circumstances to take immediate response action, or the Party of the operator has failed within a reasonable time to notify the Secretariat of the Antarctic Treaty that it will take the response action itself, or where that response action has not been taken within a reasonable time after such notification.

(c) In the case that the Party of the operator takes response action itself, but is willing to be assisted by another Party or Parties, the Party of the operator shall coordinate the response action.

4. However, where it is unclear which, if any, Party is the Party of the operator or it appears that there may be more than one such Party, any Party taking response action shall make best endeavours to consult as appropriate and shall, where practicable, notify the Secretariat of the Antarctic Treaty of the circumstances.

5. Parties taking response action shall consult and coordinate their action with all other Parties taking response action, carrying out activities in the vicinity of the environmental emergency, or otherwise impacted by the environmental emergency, and shall, where practicable, take into account all relevant expert guidance which has been provided by permanent observer delegations to the Antarctic Treaty Consultative Meeting, by other organisations, or by other relevant experts.

### ***Article 6***

#### **Liability**

1. An operator that fails to take prompt and effective response action to environmental emergencies arising from its activities shall be liable to pay the costs of response action taken by Parties pursuant to Article 5(2) to such Parties.

2. (a) When a State operator should have taken prompt and effective response action but did not, and no response action was taken by any Party, the State operator shall be liable to pay the costs of the response action which should have been undertaken, into the fund referred to in Article 12.

(b) When a non-State operator should have taken prompt and effective response action but did not, and no response action was taken

by any Party, the non-State operator shall be liable to pay an amount of money that reflects as much as possible the costs of the response action that should have been taken. Such money is to be paid directly to the fund referred to in Article 12, to the Party of that operator or to the Party that enforces the mechanism referred to in Article 7(3). A Party receiving such money shall make best efforts to make a contribution to the fund referred to in Article 12 which at least equals the money received from the operator.

3. Liability shall be strict.
4. When an environmental emergency arises from the activities of two or more operators, they shall be jointly and severally liable, except that an operator which establishes that only part of the environmental emergency results from its activities shall be liable in respect of that part only.
5. Notwithstanding that a Party is liable under this Article for its failure to provide for prompt and effective response action to environmental emergencies caused by its warships, naval auxiliaries, or other ships or aircraft owned or operated by it and used, for the time being, only on government non-commercial service, nothing in this Annex is intended to affect the sovereign immunity under international law of such warships, naval auxiliaries, or other ships or aircraft.

#### *Article 7*

#### **Actions**

1. Only a Party that has taken response action pursuant to Article 5(2) may bring an action against a non-State operator for liability pursuant to Article 6(1) and such action may be brought in the courts of not more than one Party where the operator is incorporated or has its principal place of business or his or her habitual place of residence. However, should the operator not be incorporated in a Party or have its principal place of business or his or her habitual place of residence in a Party, the action may be brought in the courts of the Party of the operator within the meaning of Article 2(d). Such actions for compensation shall be brought within three years of the commencement of the response action or within three years of the date on which the Party bringing the action knew or ought reasonably to have known the identity of the operator, whichever is later. In no event shall an action against a non-State operator be commenced later than 15 years after the commencement of the response action.

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2. Each Party shall ensure that its courts possess the necessary jurisdiction to entertain actions under paragraph 1 above.

3. Each Party shall ensure that there is a mechanism in place under its domestic law for the enforcement of Article 6(2)(b) with respect to any of its non-State operators within the meaning of Article 2(d), as well as where possible with respect to any non-State operator that is incorporated or has its principal place of business or his or her habitual place of residence in that Party. Each Party shall inform all other Parties of this mechanism in accordance with Article 13(3) of the Protocol. Where there are multiple Parties that are capable of enforcing Article 6(2)(b) against any given non-State operator under this paragraph, such Parties should consult amongst themselves as to which Party should take enforcement action. The mechanism referred to in this paragraph shall not be invoked later than 15 years after the date the Party seeking to invoke the mechanism became aware of the environmental emergency.

4. The liability of a Party as a State operator under Article 6(1) shall be resolved only in accordance with any enquiry procedure which may be established by the Parties, the provisions of Articles 18, 19 and 20 of the Protocol and, as applicable, the Schedule to the Protocol on Arbitration.

5. (a) The liability of a Party as a State operator under Article 6(2)(a) shall be resolved only by the Antarctic Treaty Consultative Meeting and, should the question remain unresolved, only in accordance with any enquiry procedure which may be established by the Parties, the provisions of Articles 18, 19 and 20 of the Protocol and, as applicable, the Schedule to the Protocol on Arbitration.

(b) The costs of the response action which should have been undertaken and was not, to be paid by a State operator into the fund referred to in Article 12, shall be approved by means of a Decision. The Antarctic Treaty Consultative Meeting should seek the advice of the Committee on Environmental Protection as appropriate.

6. Under this Annex, the provisions of Articles 19(4), 19(5), and 20(1) of the Protocol, and, as applicable, the Schedule to the Protocol on Arbitration, are only applicable to liability of a Party as a State operator for compensation for response action that has been undertaken to an environmental emergency or for payment into the fund.

### *Article 8*

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### **Exemptions from Liability**

1. An operator shall not be liable pursuant to Article 6 if it proves that the environmental emergency was caused by:
  - (a) an act or omission necessary to protect human life or safety;
  - (b) an event constituting in the circumstances of Antarctica a natural disaster of an exceptional character, which could not have been reasonably foreseen, either generally or in the particular case, provided all reasonable preventative measures have been taken that are designed to reduce the risk of environmental emergencies and their potential adverse impact;
  - (c) an act of terrorism; or
  - (d) an act of belligerency against the activities of the operator.
  
2. A Party, or its agents or operators specifically authorised by it to take such action on its behalf, shall not be liable for an environmental emergency resulting from response action taken by it pursuant to Article 5(2) to the extent that such response action was reasonable in all the circumstances.

### **Article 9**

#### **Limits of Liability**

1. The maximum amount for which each operator may be liable under Article 6(1) or Article 6(2), in respect of each environmental emergency, shall be as follows:
  - (a) for an environmental emergency arising from an event involving a ship:
    - (i) one million SDR for a ship with a tonnage not exceeding 2,000 tons;
    - (ii) for a ship with a tonnage in excess thereof, the following amount in addition to that referred to in (i) above:
      - for each ton from 2,001 to 30,000 tons, 400 SDR;

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- for each ton from 30,001 to 70,000 tons, 300 SDR; and

- for each ton in excess of 70,000 tons, 200 SDR;

(b) for an environmental emergency arising from an event which does not involve a ship, three million SDR.

2. (a) Notwithstanding paragraph 1(a) above, this Annex shall not affect:

(i) the liability or right to limit liability under any applicable international limitation of liability treaty; or

(ii) the application of a reservation made under any such treaty to exclude the application of the limits therein for certain claims;

provided that the applicable limits are at least as high as the following: for a ship with a tonnage not exceeding 2,000 tons, one million SDR; and for a ship with a tonnage in excess thereof, in addition, for a ship with a tonnage between 2,001 and 30,000 tons, 400 SDR for each ton; for a ship with a tonnage from 30,001 to 70,000 tons, 300 SDR for each ton; and for each ton in excess of 70,000 tons, 200 SDR for each ton.

(b) Nothing in subparagraph (a) above shall affect either the limits of liability set out in paragraph 1(a) above that apply to a Party as a State operator, or the rights and obligations of Parties that are not parties to any such treaty as mentioned above, or the application of Article 7(1) and Article 7(2).

3. Liability shall not be limited if it is proved that the environmental emergency resulted from an act or omission of the operator, committed with the intent to cause such emergency, or recklessly and with knowledge that such emergency would probably result.

4. The Antarctic Treaty Consultative Meeting shall review the limits in paragraphs 1(a) and 1(b) above every three years, or sooner at the request of any Party. Any amendments to these limits, which shall be determined after



consultation amongst the Parties and on the basis of advice including scientific and technical advice, shall be made under the procedure set out in Article 13(2).

5. For the purpose of this Article:

- (a) “ship” means a vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and fixed or floating platforms;
- (b) “SDR” means the Special Drawing Rights as defined by the International Monetary Fund;
- (c) a ship’s tonnage shall be the gross tonnage calculated in accordance with the tonnage measurement rules contained in Annex I of the International Convention on Tonnage Measurement of Ships, 1969.

#### *Article 10*

#### **State Liability**

A Party shall not be liable for the failure of an operator, other than its State operators, to take response action to the extent that that Party took appropriate measures within its competence, including the adoption of laws and regulations, administrative actions and enforcement measures, to ensure compliance with this Annex.

#### *Article 11*

#### **Insurance and Other Financial Security**

- 1. Each Party shall require its operators to maintain adequate insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover liability under Article 6(1) up to the applicable limits set out in Article 9(1) and Article 9(2).
- 2. Each Party may require its operators to maintain adequate insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover liability under Article 6(2) up to the applicable limits set out in Article 9(1) and Article 9(2).

3. Notwithstanding paragraphs 1 and 2 above, a Party may maintain self-insurance in respect of its State operators, including those carrying out activities in the furtherance of scientific research.

### *Article 12*

#### **The Fund**

1. The Secretariat of the Antarctic Treaty shall maintain and administer a fund, in accordance with Decisions including terms of reference to be adopted by the Parties, to provide, *inter alia*, for the reimbursement of the reasonable and justified costs incurred by a Party or Parties in taking response action pursuant to Article 5(2).

2. Any Party or Parties may make a proposal to the Antarctic Treaty Consultative Meeting for reimbursement to be paid from the fund. Such a proposal may be approved by the Antarctic Treaty Consultative Meeting, in which case it shall be approved by way of a Decision. The Antarctic Treaty Consultative Meeting may seek the advice of the Committee of Environmental Protection on such a proposal, as appropriate.

3. Special circumstances and criteria, such as: the fact that the responsible operator was an operator of the Party seeking reimbursement; the identity of the responsible operator remaining unknown or not subject to the provisions of this Annex; the unforeseen failure of the relevant insurance company or financial institution; or an exemption in Article 8 applying, shall be duly taken into account by the Antarctic Treaty Consultative Meeting under paragraph 2 above.

4. Any State or person may make voluntary contributions to the fund.

### *Article 13*

#### **Amendment or Modification**

1. This Annex may be amended or modified by a Measure adopted in accordance with Article IX(1) of the Antarctic Treaty.

2. In the case of a Measure pursuant to Article 9(4), and in any other case unless the Measure in question specifies otherwise, the amendment or modification shall be deemed to have been approved, and shall become effective, one year after the close of the Antarctic Treaty Consultative Meeting

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at which it was adopted, unless one or more Antarctic Treaty Consultative Parties notifies the Depositary, within that time period, that it wishes any extension of that period or that it is unable to approve the Measure.

3. Any amendment or modification of this Annex which becomes effective in accordance with paragraph 1 or 2 above shall thereafter become effective as to any other Party when notice of approval by it has been received by the Depositary.

## Part 2—Environmental emergencies etc.

### *Antarctic Treaty (Environment Protection) Act 1980*

#### 10 Subsection 3(1)

Insert:

*Account* means the Antarctic Environmental Liability Special Account established under section 13CJ.

#### 11 Subsection 3(1)

Insert:

*authorised officer* means a person appointed under section 3A as an authorised officer for the purposes of a provision of this Act.

#### 12 Subsection 3(1)

Insert:

*costs order* means an order under subsection 13CF(1) or 13CG(1).

#### 13 Subsection 3(1)

Insert:

*engage in conduct* means:  
(a) do an act; or  
(b) omit to perform an act.

#### 14 Subsection 3(1)

Insert:

*reasonable measures* means measures which are:  
(a) appropriate, practicable and proportionate; and  
(b) based on the availability of objective criteria and information, including information about:  
(i) the risks to the Antarctic environment, and the rate of its natural recovery; and  
(ii) the risks to human life and safety; and

(iii) technological and economic feasibility.

### **15 Subsection 3(1)**

Insert:

***response action*** means reasonable measures taken after an environmental emergency has occurred to avoid, minimise or contain the impact of the emergency and includes:

- (a) cleaning up in appropriate circumstances; and
- (b) determining the extent and impact of the emergency.

### **16 After section 3**

Insert:

#### **3A Minister may appoint authorised officers**

- (1) The Minister may, in writing, appoint a person:
- (a) who is an SES employee, or acting SES employee, in the Department; or
  - (b) who is an APS employee who holds or performs the duties of an Executive Level 2 position, or an equivalent position, in the Department;
- as an authorised officer for the purposes of a provision of this Act.

Note: ***SES employee*** and ***acting SES employee*** are defined in section 2B of the *Acts Interpretation Act 1901*.

- (2) A copy of the instrument of appointment must be published in the *Gazette*.

### **17 Before subsection 9(3)**

Insert:

- (2D) If a person is an operator, the Minister must not grant the person a permit authorising an activity unless the person holds an environmental protection approval in relation to the activity.

### **18 Section 13BA (before the last paragraph)**

Insert:

A person must not carry on an activity in the Antarctic unless the operator who organises the activity holds an environmental protection approval. The conditions imposed on the approval must be complied with.

**19 Paragraph 13BC(2)(c)**

Repeal the paragraph, substitute:

- (c) the operator has or will have adequate insurance, or other financial security, in respect of an amount the operator would be required to pay if a costs order were made in relation to an environmental emergency arising from the activity; and
- (d) the amount for which the operator is indemnified under that insurance, or other financial security, is or will be at least equal to the amount prescribed for the purpose of subparagraph 13CF(2)(b)(ii).

**20 Paragraph 13BE(c)**

Repeal the paragraph, substitute:

- (c) a condition that the operator must have adequate insurance, or other financial security, in respect of an amount the operator would be required to pay if a costs order were made in relation to an environmental emergency arising from the activity;
- (d) a condition that the amount for which the operator is indemnified under that insurance, or other financial security, is at least equal to the amount prescribed for the purpose of subparagraph 13CF(2)(b)(ii).

**21 After Division 4 of Part 3B**

Insert:

**Division 5—Offences etc. relating to environmental protection approvals**

**13BI Activity must not be carried on without environmental protection approval**

- (1) An operator contravenes this subsection if:

- (a) the operator organises an activity to be carried on in the Antarctic; and
  - (b) a person carries on the activity at a particular time; and
  - (c) at that time, the operator does not hold an environmental protection approval in relation to the activity.
- (2) A person contravenes this subsection if:
- (a) the person carries on an activity in the Antarctic at a particular time; and
  - (b) the activity was organised by an operator; and
  - (c) at that time, the operator does not hold an environmental protection approval in relation to the activity.
- (3) Subsections (1) and (2) do not apply if:
- (a) the activity is carried on in an emergency:
    - (i) to save a person from death or serious injury; or
    - (ii) to secure the safety of a ship or aircraft, or the safety of equipment or facilities of high value; or
    - (iii) to protect the environment; or
  - (b) the operator is authorised to carry on the activity under a law of a Contracting Party; or
  - (c) the activity is carried on in compliance with a direction given to the operator under subsection 13CD(1).

*Offence*

- (4) A person commits an offence if the person contravenes subsection (1) or (2). The physical elements of the offence are set out in that subsection.

Penalty: Imprisonment for 7 years or 420 penalty units, or both.

Note: A defendant bears an evidential burden in relation to the matters in subsection (3). See subsection 13.3(3) of the *Criminal Code*.

*Civil penalty provision*

- (5) A person is liable to a civil penalty if the person contravenes subsection (1) or (2).

Civil penalty: 1,000 penalty units.

Note: It is not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision, except in limited circumstances (see section 22N).

- (6) A person who wishes to rely on subsection (3) in proceedings for a civil penalty order bears an evidential burden in relation to the matters in that subsection.

### **13BJ Non-compliance with conditions**

- (1) An operator contravenes this subsection if:
- (a) the operator holds an environmental protection approval in relation to an activity; and
  - (b) a person carries on the activity; and
  - (c) the conditions imposed on the approval are not complied with.
- (2) Subsection (1) does not apply if:
- (a) the activity is carried on in an emergency:
    - (i) to save a person from death or serious injury; or
    - (ii) to secure the safety of a ship or aircraft, or the safety of equipment or facilities of high value; or
    - (iii) to protect the environment; or
  - (b) the operator is authorised to carry on the activity under a law of a Contracting Party; or
  - (c) the activity is carried on in compliance with a direction given to the operator under subsection 13CD(1).

#### *Offence*

- (3) An operator commits an offence if the operator contravenes subsection (1). The physical elements of the offence are set out in that subsection.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

#### *Civil penalty provision*

- (4) An operator is liable to a civil penalty if the operator contravenes subsection (1).



Civil penalty: 500 penalty units.

Note: It is not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision, except in limited circumstances (see section 22N).

- (5) An operator who wishes to rely on subsection (2) in proceedings for a civil penalty order bears an evidential burden in relation to the matters in that subsection.

## **22 After Part 3B**

Insert:

# **Part 3C—Environmental emergencies**

## **Division 1—Introduction**

### **13CA Simplified outline**

The following is a simplified outline of this Part:

This Part deals with environmental emergencies in the Antarctic.

If an environmental emergency is caused by an activity carried on by a person in the Antarctic, the operator who organised the activity must immediately notify the Minister, or an authorised officer, of the emergency.

The operator must also ensure that prompt and effective response action is taken in relation to the emergency.

The Minister may give the operator a direction in relation to the emergency. The operator must comply with the direction.

If the operator does not take prompt and effective response action in relation to the emergency, a Court may in certain circumstances make a costs order against the operator.

This Part also establishes the Antarctic Environmental Liability Special Account and deals with other miscellaneous matters.

## Division 2—Obligations of operators in relation to environmental emergencies

### 13CB Notification of an environmental emergency

- (1) An operator contravenes this subsection if:
  - (a) the operator organises an activity to be carried on in the Antarctic; and
  - (b) a person carries on the activity; and
  - (c) the activity causes an environmental emergency; and
  - (d) the operator does not immediately notify the Minister, or an authorised officer, of the emergency.
- (2) Subsection (1) does not apply if the operator has already notified a Party to the Madrid Protocol of the environmental emergency.

#### *Offence*

- (3) An operator commits an offence if the operator contravenes subsection (1). The physical elements of the offence are set out in that subsection.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

#### *Civil penalty provision*

- (4) An operator is liable to a civil penalty if the operator contravenes subsection (1).

Civil penalty: 500 penalty units.

Note: It is not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision, except in limited circumstances (see section 22N).

- (5) An operator who wishes to rely on subsection (2) in proceedings for a civil penalty order bears an evidential burden in relation to the matter in that subsection.

**13CC Operator must ensure that prompt and effective response action is taken**

- (1) An operator contravenes this subsection if:
- (a) the operator organises an activity to be carried on in the Antarctic; and
  - (b) a person carries on the activity; and
  - (c) the activity gives rise to an environmental emergency; and
  - (d) the operator does not ensure that prompt and effective response action is taken in relation to the emergency.
- (2) Subsection (1) does not apply if the environmental emergency was caused by:
- (a) an act or omission necessary to protect human life or safety; or
  - (b) an event constituting in the circumstances of the Antarctic a natural disaster of an exceptional character if:
    - (i) the event could not have been reasonably foreseen, either generally or in the particular case; and
    - (ii) all reasonable preventative measures designed to reduce the risk of environmental emergencies, and their potential adverse impact, were taken by the operator; or
  - (c) an act of terrorism; or
  - (d) an act of belligerency against the activities organised by the operator.

*Offence*

- (3) An operator commits an offence if the operator contravenes subsection (1). The physical elements of the offence are set out in that subsection.

Penalty: Imprisonment for 7 years or 420 penalty units, or both.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

*Civil penalty provision*

- (4) An operator is liable to a civil penalty if the operator contravenes subsection (1).

Civil penalty: 1,000 penalty units.

Note: It is not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision, except in limited circumstances (see section 22N).

- (5) An operator who wishes to rely on subsection (2) in proceedings for a civil penalty order bears an evidential burden in relation to the matters in that subsection.

### **Division 3—Ministerial directions**

#### **13CD Directions in relation to an environmental emergency**

- (1) If:
- (a) a person carries on an activity in the Antarctic; and
  - (b) the activity gives rise to an environmental emergency;
- the Minister may give the operator who organised the activity a written direction in relation to the emergency.
- (2) If an operator is given a direction under subsection (1), the operator must comply with the direction.

Note: See section 13CE for non-compliance with a direction.

- (3) Neither the Minister nor the Commonwealth is liable to any action or proceeding, whether civil or criminal, for or in relation to an act done, or omitted to be done, by the operator in compliance, or purported compliance, with the direction.
- (4) A direction given under subsection (1) is not a legislative instrument.

#### **13CE Non-compliance with direction**

- (1) An operator contravenes this subsection if:
- (a) the operator is given a direction under subsection 13CD(1); and
  - (b) the operator engages in conduct; and
  - (c) the conduct contravenes the direction.
- (2) Subsection (1) does not apply if the operator engages in the conduct in an emergency:
- (a) to save a person from death or serious injury; or

- (b) to secure the safety of a ship or aircraft, or the safety of equipment or facilities of high value; or
- (c) to protect the environment.

*Offence*

- (3) An operator commits an offence if the operator contravenes subsection (1). The physical elements of the offence are set out in that subsection.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

*Civil penalty provision*

- (4) An operator is liable to a civil penalty if the operator contravenes subsection (1).

Civil penalty: 500 penalty units.

Note: It is not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision, except in limited circumstances (see section 22N).

- (5) An operator who wishes to rely on subsection (2) in proceedings for a civil penalty order bears an evidential burden in relation to the matters in that subsection.

## **Division 4—Costs orders**

### **13CF Costs order—response action taken by Party to Madrid Protocol**

- (1) If:
  - (a) an activity is carried on in the Antarctic; and
  - (b) the activity gives rise to an environmental emergency; and
  - (c) the operator who organised the activity:
    - (i) is not a Party to the Madrid Protocol; and
    - (ii) does not take prompt and effective response action in relation to the emergency; and

(d) a Party to the Protocol takes response action under Article 5(2) of Annex VI to the Protocol (whether directly or through an agent or other person authorised by the Party);  
a Court may, on application, order the operator to pay an amount to the Party.

*Limit on amount payable*

- (2) The amount must not exceed:
- (a) if the environmental emergency resulted from an act or omission of the operator that was done with the intention of causing the emergency, or recklessly and with the knowledge that the emergency would probably result—the costs incurred by the Party in taking the response action; or
  - (b) otherwise—the lower of the following:
    - (i) the costs incurred by the Party in taking the response action;
    - (ii) the amount prescribed by the regulations.

*Exception*

- (3) The Court must not make an order under subsection (1) if the environmental emergency was caused by:
- (a) an act or omission necessary to protect human life or safety; or
  - (b) an event constituting in the circumstances of the Antarctic a natural disaster of an exceptional character if:
    - (i) the event could not have been reasonably foreseen, either generally or in the particular case; and
    - (ii) all reasonable preventative measures designed to reduce the risk of environmental emergencies, and their potential adverse impact, were taken by the operator; or
  - (c) an act of terrorism; or
  - (d) an act of belligerency against the activities organised by the operator.

*Application for order*

- (4) An application for an order under subsection (1) may be made by:
- (a) if the Party is Australia—the Minister; or

- (b) if the Party is another Party to the Madrid Protocol—that Party.
- (5) An application for an order under subsection (1) must be made within whichever of the following periods ends later:
  - (a) the period of 3 years beginning on the day on which the response action begins;
  - (b) the period of 3 years beginning on the day on which the Party knew, or ought reasonably to have known, the identity of the operator.
- (6) Despite paragraph (5)(b), the application must not be made more than 15 years after the day on which the response action begins.

### **13CG Costs order—no response action taken by any person**

- (1) If:
  - (a) an activity is carried on in the Antarctic; and
  - (b) the activity gives rise to an environmental emergency; and
  - (c) the operator who organised the activity:
    - (i) is not a Party to the Madrid Protocol; and
    - (ii) does not take prompt and effective response action in relation to the emergency; and
  - (d) no Party to the Protocol takes response action under Article 5(2) of Annex VI to the Protocol (whether directly or through an agent or other person authorised by the Party);a Court may, on application by the Minister, order the operator to pay an amount to the Commonwealth.

#### *Limit on amount payable*

- (2) The amount must not exceed:
  - (a) if the environmental emergency resulted from an act or omission of the operator that was done with the intention of causing the emergency, or recklessly and with the knowledge that the emergency would probably result—the costs of the response action that should have been taken; or
  - (b) otherwise—the lower of the following:
    - (i) the costs of the response action that should have been taken;
    - (ii) the amount prescribed by the regulations.

*Exception*

- (3) The Court must not make an order under subsection (1) if the operator proves that the environmental emergency was caused by:
- (a) an act or omission necessary to protect human life or safety; or
  - (b) an event constituting in the circumstances of the Antarctic a natural disaster of an exceptional character if:
    - (i) the event could not have been reasonably foreseen, either generally or in the particular case; and
    - (ii) all reasonable preventative measures designed to reduce the risk of environmental emergencies, and their potential adverse impact, were taken by the operator; or
  - (c) an act of terrorism; or
  - (d) an act of belligerency against the activities organised by the operator.

*Application for order*

- (4) The application must be made within the period of 15 years beginning on the day on which the Commonwealth became aware of the environmental emergency.

**13CH Enforcement of costs order**

- (1) This section applies if a costs order is made that an operator pay an amount to either of the following (the *plaintiff*):
- (a) a Party to the Madrid Protocol;
  - (b) the Commonwealth.
- (2) The amount is taken to be a civil debt payable by the operator to the plaintiff.
- (3) The plaintiff may enforce the order as if it were an order made in civil proceedings against the operator to recover a debt due by the operator to the plaintiff.
- (4) The debt arising from the order is taken to be a judgement debt.



### **13CI Joint and several liability**

- (1) If an environmental emergency arises from an activity or activities carried on in the Antarctic that were organised by 2 or more operators, the operators are jointly and severally liable in relation to the emergency.
- (2) Despite subsection (1), an operator is not jointly and severally liable in relation to any part of the environmental emergency that did not result from an activity or activities organised by the operator.

## **Division 5—Special Account**

### **13CJ Name of Account**

- (1) The Antarctic Environmental Liability Special Account is established by this section.
- (2) The Account is a Special Account for the purposes of the *Financial Management and Accountability Act 1997*.

### **13CK Credits to the Account**

There must be credited to the Account amounts equal to the following:

- (a) amounts paid to the Commonwealth under a costs order;
- (b) voluntary payments made by a person to the Commonwealth for the purposes of the Account;
- (c) amounts of any gifts given or bequests made for the purposes of the Account.

Note: An Appropriation Act may contain a provision to the effect that, if any of the purposes of a Special Account is a purpose that is covered by an item in the Appropriation Act (whether or not the item expressly refers to the Special Account), then amounts may be debited against the appropriation for that item and credited to that Special Account.

### **13CL Purposes of the Account**

The purposes of the Account are as follows:

- (a) making payments to the fund referred to in Article 12 of Annex VI to the Madrid Protocol;

(b) paying or discharging the costs, expenses and other obligations incurred by the Commonwealth in taking response action under Article 5(2) of that Annex (whether directly or through an agent or other person authorised by the Commonwealth);

(c) meeting the expenses of administering the Account.

Note: See section 21 of the *Financial Management and Accountability Act 1997* (debits from Special Accounts).

## **Division 6—Miscellaneous**

### **13CM Payment to fund**

If the Commonwealth is required or permitted to make a payment to the fund referred to in Article 12 of Annex VI to the Madrid Protocol, the Minister must cause the payment to be made in a timely manner.

### **23 Before subsection 17(5)**

Insert:

(4B) An inspector may require any person whom he or she finds carrying on, or whom he or she reasonably suspects of having carried on, an activity in respect of which an operator is required to hold an environmental protection approval to produce:

(a) the approval; or

(b) evidence of the existence and contents of the approval.

### **24 After paragraph 19(3)(c)**

Insert:

(ca) the action in question was done in compliance with a direction given to the person under subsection 13CD(1); or

### **25 At the end of subsection 19(3)**

Add:

Note: A defendant bears an evidential burden in relation to the matters in subsection (3). See subsection 13.3(3) of the *Criminal Code*.

### **26 At the end of section 19AA**

Add:

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- (3) Subsections (1) and (2) do not apply in relation to an action if it is done in compliance with a direction given to the person under subsection 13CD(1).

Note: A defendant bears an evidential burden in relation to the matter in subsection (3). See subsection 13.3(3) of the *Criminal Code*.

## **27 Subsection 20(2)**

Repeal the subsection, substitute:

- (2) Subsection (1) does not apply in relation to conduct if the conduct is engaged in by the person in compliance with a direction given to the person under subsection 13CD(1).

Note: A defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

## **28 Subsections 21(2), 21AA(5) and 21AB(4)**

Repeal the subsections.

## **29 At the end of subsection 21A(4) (before the note)**

Add:

- ; or (c) the activity was carried on in compliance with a direction given to the person under subsection 13CD(1).

## **30 At the end of section 27**

Add:

- ; or (e) the power under section 13CD to give a direction; or  
(f) the power under section 13CF or 13CG to apply for a costs order.

## **Part 3—Amendment relating to safety approvals**

### ***Antarctic Treaty (Environment Protection) Act 1980***

#### **31 At the end of subsections 13AI(3) and 13AJ(2)**

Add:

; or (c) the activity is carried on in compliance with a direction given to the non-State operator under subsection 13CD(1).

## **Part 4—Application and savings provisions**

### **32 Definitions**

In this Part:

*commencement* means the commencement of this item.

*Principal Act* means the *Antarctic Treaty (Environment Protection) Act 1980*.

### **33 Application—pre-commencement applications for a permit**

- (1) This item applies if:
  - (a) an application under subsection 9(1) of the Principal Act was made before commencement; and
  - (b) the Minister did not make a decision on the application before commencement.
- (2) Subsection 9(2D) of that Act, as inserted by Part 2 of this Schedule, applies in relation to the application.

### **34 Application—offences etc. relating to environmental protection approvals**

Sections 13BI and 13BJ of the Principal Act, as inserted by Part 2 of this Schedule, apply in relation to an activity carried on in the Antarctic after commencement.

### **35 Application—provisions relating to environmental emergencies**

Sections 13CB, 13CC and 13CD of the Principal Act, as inserted by Part 2 of this Schedule, apply in relation to an activity carried on in the Antarctic that causes or gives rise to an environmental emergency if the activity is carried on after commencement.

### **36 Application—costs orders**

Sections 13CF and 13CG of the Principal Act, as inserted by Part 2 of this Schedule, apply in relation to an activity carried on in the Antarctic that gives rise to an environmental emergency if the activity is carried on after commencement.

**37 Saving of designation etc. as an authorised officer**

- (1) This item applies if:
  - (a) before commencement, a person was designated or authorised as an authorised officer under subsection 21(2), 21AA(5) or 21AB(4) of the Principal Act; and
  - (b) the designation or authorisation had not ended immediately before commencement.
- (2) After commencement, the designation or authorisation continues in force as if it were an appointment made under section 3A of that Act, as inserted by Part 2 of this Schedule.

## **Schedule 3—Implementation of Measure 15 (2009)**

### ***Antarctic Treaty (Environment Protection) Act 1980***

#### **1 Subsection 3(1)**

Insert:

*guide*, in relation to the passengers of a vessel, means a person:

- (a) who, in the opinion of the person (the *organiser*) who organises the vessel to take the passengers to the Antarctic, has relevant expertise in relation to the Antarctic; and
- (b) who is engaged by the organiser to be a guide in relation to the passengers.

#### **2 Subsection 3(1)**

Insert:

*passenger*, of a vessel, does not include:

- (a) a person employed or engaged in any capacity on board the vessel on the business of the vessel; or
- (b) a guide.

#### **3 After Part 2**

Insert:

### **Part 2A—Vessels**

#### **12AA Simplified outline**

The following is a simplified outline of this Part:

This Part is about vessels that carry passengers to the Antarctic. The limits set out in this Part apply if the vessels are organised to carry the passengers by a person who is not a Contracting Party to the Treaty.

### 12AB Prohibition on passengers disembarking from certain vessels

- (1) A person contravenes this subsection if:
  - (a) the person is not a Contracting Party to the Treaty; and
  - (b) the person organises a vessel to carry passengers to the Antarctic; and
  - (c) one or more passengers of the vessel (the *first vessel*) disembark (whether or not from the first vessel or another vessel) onto land within the Antarctic; and
  - (d) immediately before any passengers disembark from the first vessel, that vessel is carrying more than the number of passengers prescribed by the regulations.
- (2) Subsection (1) does not apply if the passengers disembark in an emergency:
  - (a) to save a person from death or serious injury; or
  - (b) to secure the safety of a ship or aircraft, or the safety of equipment or facilities of high value; or
  - (c) to protect the environment.

#### *Offence*

- (3) A person commits an offence if the person contravenes subsection (1). The physical elements of the offence are set out in that subsection.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

#### *Civil penalty provision*

- (4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 1,000 penalty units.

Note: It is not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision, except in limited circumstances (see section 22N).

- (5) A person who wishes to rely on subsection (2) in proceedings for a civil penalty order bears an evidential burden in relation to the matters in that subsection.



**12AC Limit on the number of passengers that disembark from vessels**

- (1) A person contravenes this subsection if:
- (a) the person is not a Contracting Party to the Treaty; and
  - (b) the person organises a vessel to carry passengers to the Antarctic; and
  - (c) one or more passengers of the vessel disembark (whether or not from that vessel or another vessel) onto land within the Antarctic; and
  - (d) at a particular time, the number of passengers on land within the Antarctic is higher than the number of passengers prescribed by the regulations.
- (2) Subsection (1) does not apply if the passengers disembark in an emergency:
- (a) to save a person from death or serious injury; or
  - (b) to secure the safety of a ship or aircraft, or the safety of equipment or facilities of high value; or
  - (c) to protect the environment.

*Offence*

- (3) A person commits an offence if the person contravenes subsection (1). The physical elements of the offence are set out in that subsection.

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

*Civil penalty provision*

- (4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 500 penalty units.

Note: It is not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision, except in limited circumstances (see section 22N).

- (5) A person who wishes to rely on subsection (2) in proceedings for a civil penalty order bears an evidential burden in relation to the matters in that subsection.

**12AD Requirement relating to the number of guides in relation to disembarked passengers**

- (1) A person contravenes this subsection if:
- (a) the person is not a Contracting Party to the Treaty; and
  - (b) the person organises a vessel to carry passengers to the Antarctic; and
  - (c) one or more passengers of the vessel disembark (whether or not from that vessel or another vessel) onto land within the Antarctic; and
  - (d) at a particular time, the number worked out by dividing the number of guides, in relation to the passengers, who are on the land by the number of passengers who are on the land is less than the number prescribed by the regulations.
- (2) Subsection (1) does not apply if the passengers disembark in an emergency:
- (a) to save a person from death or serious injury; or
  - (b) to secure the safety of a ship or aircraft, or the safety of equipment or facilities of high value; or
  - (c) to protect the environment.

*Offence*

- (3) A person commits an offence if the person contravenes subsection (1). The physical elements of the offence are set out in that subsection.

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

*Civil penalty provision*

- (4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 500 penalty units.

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Note: It is not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision, except in limited circumstances (see section 22N).

- (5) A person who wishes to rely on subsection (2) in proceedings for a civil penalty order bears an evidential burden in relation to the matters in that subsection.

### **12AE Requirement to coordinate**

- (1) A person (the *first person*) contravenes this subsection if:
- (a) the first person is not a Contracting Party to the Treaty; and
  - (b) the first person organises a vessel to carry passengers to the Antarctic; and
  - (c) the first person fails to coordinate with any other persons:
    - (i) who are not Contracting Parties to the Treaty; and
    - (ii) who organise vessels to carry passengers to the Antarctic;
 with the objective that no more than one vessel is at a landing site in the Antarctic at the same time.
- (2) Subsection (1) does not apply if the first person fails to coordinate with those other persons in an emergency:
- (a) to save a person from death or serious injury; or
  - (b) to secure the safety of a ship or aircraft, or the safety of equipment or facilities of high value; or
  - (c) to protect the environment.

#### *Offence*

- (3) A person commits an offence if the person contravenes subsection (1). The physical elements of the offence are set out in that subsection.

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

#### *Civil penalty provision*

- (4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 500 penalty units.

Note: It is not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision, except in limited circumstances (see section 22N).

- (5) A person who wishes to rely on subsection (2) in proceedings for a civil penalty order bears an evidential burden in relation to the matters in that subsection.

## **Schedule 4—Amendments commencing on the day after Royal Assent**

### ***Antarctic Treaty (Environment Protection) Act 1980***

#### **1 Title**

Repeal the title, substitute:

### **An Act relating to the Antarctic and the protection and conservation of the environment of the Antarctic, and for related purposes**

#### **2 Preamble**

After “a party to the”, insert “Antarctic Treaty and the”.

#### **3 Preamble**

Omit “that Protocol”, substitute “that Treaty and Protocol”.

#### **4 Subsection 3(1)**

Insert:

*civil penalty order* has the meaning given by subsection 22(4).

#### **5 Subsection 3(1)**

Insert:

*civil penalty provision*: a provision of this Act is a *civil penalty provision* if:

- (a) the provision sets out at its foot a pecuniary penalty, or penalties, indicated by the words “Civil penalty”; and
- (b) the provision is a subsection, or a section that is not divided into subsections.

#### **6 Subsection 3(1)**

Insert:

*Court* means:

- (a) the Federal Court of Australia; or
- (b) the Federal Magistrates Court; or
- (c) the Supreme Court of a State or Territory; or
- (d) a District, County or Local Court of a State or Territory; or
- (e) a Magistrates Court of a State or Territory.

## 7 Subsection 3(1)

Insert:

*evidential burden*, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

## 8 Subsection 3(1)

Insert:

*penalty unit* has the meaning given by section 4AA of the *Crimes Act 1914*.

## 9 Section 6

Repeal the section, substitute:

## 6 Crown to be bound

- (1) This Act binds the Crown in each of its capacities.
- (2) This Act does not make the Crown liable to a pecuniary penalty or to be prosecuted for an offence.

## 10 After section 6A

Insert:

## 6B Contravening offence and civil penalty provisions

- (1) This section applies if a provision of this Act declares that a person contravening another provision of this Act (the *conduct rule provision*):
  - (a) commits an offence; or
  - (b) is liable for a civil penalty.

- (2) For the purposes of this Act, the person is taken to contravene the offence or the civil penalty provision (as the case requires) if the person contravenes the conduct rule provision.

**11 Paragraph 17(1)(b)**

After “evidence as to”, insert “the contravention of a civil penalty provision or”.

**12 After paragraph 17(4)(a)**

Insert:

- (aa) require any person whom he or she finds contravening, or whom he or she reasonably suspects of having contravened, a civil penalty provision to state his or her full name and usual place of residence; and

**13 Subsection 17(6)**

Omit “in pursuance of subsection (4)”, substitute “under this section”.

**14 Subsection 18(1)**

After “involved in”, insert “the contravention of a civil penalty provision or”.

**15 Subsection 18(1)**

Omit all the words after “and may”, substitute:

retain the article:

- (a) if proceedings for:
- (i) an offence against this Act in the commission of which it may have been involved; or
  - (ii) a contravention of a civil penalty provision in the contravention of which it may have been involved;
- are commenced within 60 days after it is seized—until the proceedings (including any appeal) are completed; or
- (b) otherwise—for up to 60 days.

**16 Part 5 (heading)**

Repeal the heading, substitute:

## Part 5—Offences relating to the environment etc.

### 17 After Part 5

Insert:

## Part 5A—Civil penalty provisions

### Division 1—Obtaining a civil penalty order

#### 22 Civil penalty orders

##### *Application for order*

- (1) The Minister may apply to a Court for an order that a person, who is alleged to have contravened a civil penalty provision, pay the Commonwealth a pecuniary penalty.
- (2) The Minister must make the application within 6 years of the alleged contravention.

##### *Court may order person to pay pecuniary penalty*

- (3) If the Court is satisfied that the person has contravened the civil penalty provision, the Court may order the person to pay to the Commonwealth such pecuniary penalty for the contravention as the Court determines to be appropriate.

Note: Subsection (5) sets out the maximum penalty that the Court may order the person to pay.

- (4) An order under subsection (3) is a ***civil penalty order***.

##### *Determining pecuniary penalty*

- (5) The pecuniary penalty must not be more than:
  - (a) if the person is a body corporate—5 times the pecuniary penalty specified for the civil penalty provision; and
  - (b) otherwise—the pecuniary penalty specified for the civil penalty provision.
- (6) In determining the pecuniary penalty, the Court must take into account all relevant matters, including:
  - (a) the nature and extent of the contravention; and



- (b) the nature and extent of any loss or damage suffered because of the contravention; and
- (c) the circumstances in which the contravention took place; and
- (d) whether the person has previously been found by a court to have engaged in any similar conduct.

## **22A Civil enforcement of penalty**

- (1) A pecuniary penalty is a debt payable to the Commonwealth.
- (2) The Commonwealth may enforce a civil penalty order as if it were an order made in civil proceedings against the person to recover a debt due by the person. The debt arising from the order is taken to be a judgement debt.

## **22B Conduct contravening more than one civil penalty provision**

- (1) If conduct constitutes a contravention of 2 or more civil penalty provisions, proceedings may be instituted under this Part against a person in relation to the contravention of any one or more of those provisions.
- (2) However, the person is not liable to more than one pecuniary penalty under this Part in relation to the same conduct.

## **22C Multiple contraventions**

- (1) A Court may make a single civil penalty order against a person for multiple contraventions of a civil penalty provision if proceedings for the contraventions are founded on the same facts, or if the contraventions form, or are part of, a series of contraventions of the same or a similar character.
- (2) However, the penalty must not exceed the sum of the maximum penalties that could be ordered if a separate penalty were ordered for each of the contraventions.

## **22D Proceedings may be heard together**

A Court may direct that 2 or more proceedings for civil penalty orders are to be heard together.

## **22E Civil evidence and procedure rules for civil penalty orders**

A Court must apply the rules of evidence and procedure for civil matters when hearing proceedings for a civil penalty order.

## **22F Contravening a civil penalty provision is not an offence**

A contravention of a civil penalty provision is not an offence.

## **Division 2—Civil proceedings and criminal proceedings**

### **22G Civil proceedings after criminal proceedings**

A Court may not make a civil penalty order against a person for a contravention of a civil penalty provision if the person has been convicted of an offence constituted by conduct that is the same, or substantially the same, as the conduct constituting the contravention.

### **22H Criminal proceedings during civil proceedings**

- (1) Proceedings for a civil penalty order against a person for a contravention of a civil penalty provision are stayed if:
  - (a) criminal proceedings are commenced or have already been commenced against the person for an offence; and
  - (b) the offence is constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute the contravention.
- (2) The proceedings for the order (the *civil proceedings*) may be resumed if the person is not convicted of the offence. Otherwise:
  - (a) the civil proceedings are dismissed; and
  - (b) costs must not be awarded in relation to the civil proceedings.

### **22J Criminal proceedings after civil proceedings**

Criminal proceedings may be commenced against a person for conduct that is the same, or substantially the same, as conduct that would constitute a contravention of a civil penalty provision regardless of whether a civil penalty order has been made against the person in relation to the contravention.

## **22K Evidence given in civil proceedings not admissible in criminal proceedings**

- (1) Evidence of information given, or evidence of production of documents by an individual, is not admissible in criminal proceedings against the individual if:
  - (a) the individual previously gave the evidence or produced the documents in proceedings for a civil penalty order against the individual for an alleged contravention of a civil penalty provision (whether or not the order was made); and
  - (b) the conduct alleged to constitute the offence is the same, or substantially the same, as the conduct alleged to constitute the contravention.
- (2) However, subsection (1) does not apply to criminal proceedings in relation to the falsity of the evidence given by the individual in the proceedings for the civil penalty order.

## **Division 3—Miscellaneous**

### **22L Ancillary contravention of civil penalty provisions**

- (1) A person must not:
  - (a) attempt to contravene a civil penalty provision; or
  - (b) aid, abet, counsel or procure a contravention of a civil penalty provision; or
  - (c) induce (by threats, promises or otherwise) a contravention of a civil penalty provision; or
  - (d) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of a civil penalty provision; or
  - (e) conspire with others to effect a contravention of a civil penalty provision.

Note: Section 22N (which provides that a person's state of mind does not need to be proven in relation to a civil penalty provision) does not apply to subsection (1) of this section.

#### *Civil penalty*

- (2) A person who contravenes subsection (1) in relation to a civil penalty provision is taken to have contravened the provision.

## **22M Mistake of fact**

- (1) A person is not liable to have a civil penalty order made against the person for a contravention of a civil penalty provision if:
  - (a) at or before the time of the conduct constituting the contravention, the person:
    - (i) considered whether or not facts existed; and
    - (ii) was under a mistaken but reasonable belief about those facts; and
  - (b) had those facts existed, the conduct would not have constituted a contravention of the civil penalty provision.
- (2) For the purposes of subsection (1), a person may be regarded as having considered whether or not facts existed if:
  - (a) the person had considered, on a previous occasion, whether those facts existed in the circumstances surrounding that occasion; and
  - (b) the person honestly and reasonably believed that the circumstances surrounding the present occasion were the same, or substantially the same, as those surrounding the previous occasion.
- (3) A person who wishes to rely on subsection (1) or (2) in proceedings for a civil penalty order bears an evidential burden in relation to the matters in that subsection.

## **22N State of mind**

- (1) In proceedings for a civil penalty order against a person for a contravention of a civil penalty provision (other than subsection 22L(1)), it is not necessary to prove:
  - (a) the person's intention; or
  - (b) the person's knowledge; or
  - (c) the person's recklessness; or
  - (d) the person's negligence; or
  - (e) any other state of mind of the person.
- (2) Subsection (1) does not affect the operation of section 22M (which is about mistake of fact).

## **18 At the end of section 27**

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Add:

; or (d) the power under section 22 to apply for a civil penalty order.

**19 At the end of paragraphs 29(2)(a) and (ab)**

Add “and”.

**20 After paragraph 29(2)(ab)**

Insert:

(ac) providing for the refund of a fee referred to in paragraph (ab);  
and

**21 At the end of paragraphs 29(2)(b) to (i)**

Add “and”.

**22 After subsection 29(2)**

Insert:

(2A) A fee under subsection (2) must not be such as to amount to  
taxation.

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*[Minister’s second reading speech made in—  
House of Representatives on 23 November 2011  
Senate on 29 February 2012]*

(256/11)

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