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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**ANTARCTIC TREATY (ENVIRONMENT PROTECTION)  
AMENDMENT BILL 2010**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for the Environment, Heritage and the Arts,  
the Honourable Peter Garrett, AM MP)

## **ANTARCTIC TREATY (ENVIRONMENT PROTECTION) AMENDMENT BILL 2010**

### **GENERAL OUTLINE**

The purpose of this Bill is to amend the *Antarctic Treaty (Environment Protection) Act 1980* ('the Act') to implement Australia's international obligations arising from revisions made to Annex II to the *Protocol on Environmental Protection to the Antarctic Treaty* [1998] ATS 6 ('the Madrid Protocol').

The Madrid Protocol is a multilateral agreement under the *Antarctic Treaty* [1961] ATS 12. It commits parties to the comprehensive protection of the Antarctic environment and its dependent and associated ecosystems, and designates Antarctica as a natural reserve, devoted to peace and science. Annex II outlines provisions for the conservation of Antarctic fauna and flora.

At the XXXIInd Antarctic Treaty Consultative Meeting in 2009 the Consultative Parties adopted Measure 16 (2009) – *Amendment of Annex II to the Protocol on Environmental Protection to the Antarctic Treaty*.

The primary purpose of the amendments to Annex II is to extend the protection afforded to Antarctic native fauna and flora by creating a number of provisions to better regulate the taking of native fauna and flora, and through reducing the risk to native fauna and flora from the introduction of non-indigenous organisms.

The schedule of amendments contained in this Bill implements Measure 16 by redefining, expanding and strengthening a number of provisions in the Act. Key aspects of the amendments include:

- 1) Providing the ability for the Minister to declare invertebrates as specially protected species, and specifying restrictions regarding the taking of native invertebrates.
- 2) Enhancing the protections afforded to protect specially protected species.
- 3) Strengthening the permitting system to more tightly control the authorised introduction of organisms into the Antarctic.
- 4) Updating the offences to require persons travelling to the Antarctic take greater precaution against the accidental introduction of non-indigenous organisms into the Antarctic.
- 5) Making minor and technical amendments to the Act.

### **FINANCIAL IMPACT STATEMENT**

This Bill will have no financial impact.

## NOTES ON INDIVIDUAL CLAUSES

### Clause 1: Short title

1. This clause provides that the short title by which the Act may be cited is the *Antarctic Treaty (Environment Protection) Amendment Act 2010*.

### Clause 2: Commencement

2. Paragraph 1 of the table in subclause 2(1) provides that the commencement date for sections 1 to 3 and anything in the Bill not covered elsewhere by the table in subclause 2(1) is the day on which the Act receives the Royal Assent.

3. Paragraph 2 of the table in subclause 2(1) provides that the commencement date for Schedule 1 will be the later of: (a) the day the Act receives the Royal Assent, and (b) the day Measure 16, adopted by the XXXIInd Antarctic Treaty Consultative Meeting at Baltimore on 17 April 2009, comes into force for Australia. However, paragraph 2 provides that the provisions in Schedule 1 will not commence at all if Measure 16 does not come into force for Australia. Paragraph 2 also provides that the Minister must announce by notice in the *Gazette* the day the Measure comes into force for Australia.

### Clause 3: Schedule(s)

4. This clause provides that each Act specified in a Schedule is amended or repealed as set out in the Schedule and other items in the Schedule have effect according to their terms.

## Schedule 1 – Implementation of amendments to Annex II of the Madrid Protocol

### Part 1 – Amendments

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

#### Item 1: Subsection 3(1)

1. This item provides a definition of the term *organism* to encompass the full range of taxonomic descriptors. The definition is included to reflect the intent of Article 4(1) of Annex II to replace prescriptive lists of types of organism (e.g. animal, plant, virus, bacterium, yeast or fungus) with the term “living organism” to avoid the possibility that future variations in taxonomy could result in the unwanted exclusion of some organisms. The definition specifies that it is not intended to cover human beings.

2. The definition of *Antarctic*, meaning “the area south of 60° south latitude, including all ice shelves”, is not intended to limit the area of application for the Act. The intention is to encompass the entire area south of 60° south latitude. Measure 16 amends Article 4(2) of Annex II to restrict the introduction of dogs onto land, ice shelves or sea ice. No amendment is necessary to implement this change as the Act already has this requirement in paragraph 19(1)(caa) and the current definition of *Antarctic* is sufficiently broad.

3. The definitions of *native bird* and *native seal* are intended to cover species native to the area or occurring there naturally through migrations. No amendment to the Act is needed to reflect the changes to the definitions in Article 1(a) and 1(b) of Annex II.

**Item 2: Subsection 3(1) (definition of *specially protected species*)**

4. This item amends the definition of *specially protected species* to include native invertebrates.

**Item 3: Subsection 3(1) (definition of *take*)**

5. This item repeals the definition of *take* and replaces the definition to provide a specific definition for *native plants* and *native invertebrates*, distinct from native birds or native seals.

**Item 4: Subsection 3(2)**

6. This item repeals the subsection as the proposed new definition of *organism* adequately encompasses the purpose of the subsection (Item 1). A virus or bacterium, as well as an article containing or infected by a virus or bacterium, is included in the proposed new definition of an *organism*.

**Item 5: Subsection 7C(1)**

7. This item adds *native invertebrate* to the list of species under the subsection that can be declared as a specially protected species.

**Item 6: Subparagraph 10(1)(b)(ii)**

8. This item removes the ability to issue a permit under the Act for the taking of native birds or native seals for display in cultural institutions.

9. The subparagraph is also amended to remove the reference to zoological gardens. New restrictions applicable to the taking of native birds and native seals for display in zoological gardens are outlined in the new proposed subparagraph (10)(1)(b)(iia) (Item 7).

**Item 7: After subparagraph 10(1)(b)(ii)**

10. This item inserts a new subparagraph 10(1)(b)(iia) which provides that where a permit is to be issued for the taking of native birds or native seals for the purposes of display in zoological gardens certain restrictions apply. A permit will only be issued for this purpose where the specimen cannot be obtained from other captive collections or there is a compelling conservation reason for doing so.

**Item 8: Subparagraph 10(1)(b)(iv)**

11. This item amends the subparagraph to include a reference to the proposed new subparagraph (10)(1)(b)(iia) as a consequential result of the proposed addition of the new subparagraph (Item 7).

**Item 9: At the end of paragraph 10(1)(c)**

12. The purpose of this item is to add a new subparagraph to the end of the paragraph that relates to permits for native birds or native seals that are declared specially protected species. Recognising the conservation status of these species, the new subparagraph places an extra restriction that the killing of these species may only be permitted where there is no suitable alternative. This requirement is the same for all specially protected species, be they native birds, native seals, native plants or native invertebrates.

**Item 10: After subsection 10(1A)**

13. This item inserts a new proposed subsection 10(1AA) in relation to permits to take native invertebrates.

14. The new subsection creates a framework of restrictions relating to permits for taking native invertebrates that was not previously specified in the Act. The framework matches the restrictions for native birds and native seals, at subparagraph 10(1), taking into account several distinctions present in Annex II, as outlined below.

15. Subparagraph 10(1AA)(a) does not include a similar restriction to native birds or native seals, outlined in subparagraph 10(1)(a), that limits the number of birds or seals that can be killed or taken. This restriction, which was included to ensure populations of native birds or native seals were not depleted, is not required, as this is encompassed by the proposed new definition of *take* for native invertebrates (Item 3).

16. Subparagraph 10(1AA)(b)(iii) does not include the same restrictions on the taking of native invertebrate specimens for zoological gardens, as are proposed to apply under the new subparagraph 10(1)(b)(iia) (Item 7). This reflects the recognition by Antarctic Treaty Consultative Parties that native birds and native seals are more likely to be subject to requests for removal for display in zoological gardens, necessitating a higher threshold on taking in relation to those species. The removal of native invertebrates for the purpose of providing specimens for zoological gardens still requires a permit under this subparagraph.

**Item 11: Subparagraph 10(1B)(b)(ii)**

17. This item removes the ability to issue a permit for the taking of native plants for display in cultural institutions.

**Item 12: At the end of paragraph 10(1B)(c)**

18. The purpose of this item is to add a new subparagraph to the end of the paragraph that relates to permits for native plants that are declared specially protected species. Recognising the conservation status of these species, the new subparagraph places an extra restriction that the killing of these species should only be permitted where there is no suitable alternative. This requirement is the same for all specially protected species, be they native birds, native seals, native plants or native invertebrates.

**Item 13: Subsection 10(1D)**

19. This item repeals the subsection as a consequence of the creation of the new offence to accidentally bring into the Antarctic a non-native micro-organism at section 19AC (Item 30). The new offence applies to the introduction non-native organisms and creates a more stringent approach to the accidental introduction of micro-organisms to the Antarctic than was previously provided for under the permitting system.

**Item 14: Paragraph 10(2)(b)**

20. This item is consequential to the creation of the new offence to bring a living bird to the Antarctic at new paragraph 19(1)(cab) (Item 27). Previously it was possible to bring an native bird to the Antarctic under a permit and this item removes the scope for this to be authorised.

**Item 15: Subsection 10(3)**

21. This item repeals the current subsection and substitutes new subsections 10(3) and 10(3A) to clarify the only reasons for which it is permissible to bring into the Antarctic any non-native organism. The item creates new subsections relating to cultivated plants and all other non-native organisms.

22. Subsection 10(3) relates to the introduction of a cultivated plant or a reproductive propagule of a cultivated plant, limiting the introduction to situations where strict controls are in place to prevent escape or release into the Antarctic environment. This is to enable the introduction of cultivated plants or their reproductive propagules for the purposes of growing food for consumption in the Antarctic.

23. Subsection 10(3A) relates to the introduction of any other non-native organism, meaning any non-native organism not introduced for the purposes outlined in subsection 10(3). This proposed subsection creates a requirement that permits will only be issued for the introduction of a non-native organism for experimental scientific use and where adequate controls are in place to prevent escape or release into the Antarctic environment.

**Item 16: Subsection 10(4)**

24. This item strengthens the permit conditions relating to control and disposal or removal of organisms that are not native to the Antarctic. Where previously the removal of non-native organisms was only required in the case where they may cause harmful interference with the environment if left unsupervised, this item will result in requiring all non-native organisms to be removed. This reflects the greater emphasis on protection of the Antarctic environment from the introduction of non-indigenous species throughout these amendments.

25. This item also replaces the reference in the subsection to an “animal, plant, virus, bacterium, yeast or fungus” with a reference to an “organism”. All references to “animal, plant, virus, bacterium, yeast or fungus” are proposed to be replaced with “organism” in the Act so that the provision applies to the full range of taxonomic descriptors (Item 1).

**Item 17: Subsection 10(5)**

26. This item repeals the current subsection and substitutes a new subsection 10(5) to extend the permit specifications from “animals or plants that are not indigenous to the Antarctic” to “organisms that are not indigenous to the Antarctic”. This is to ensure consistency with offence provisions in the Act and with Australia’s international obligations.

27. This item also creates a new obligation that a permit authorising a person to bring into the Antarctic a non-native organism must specify the rationale justifying the introduction. Recognising the need to protect the Antarctic environment from non-indigenous introductions, this requirement is intended to ensure that all introductions have been suitably assessed and there is a transparent justification for authorising the permit.

**Item 18: Paragraph 17(1)(a)**

28. This item replaces the reference in the paragraph to an “animal, plant, virus, bacterium, yeast or fungus” with a reference to “any organism”. All references to “animal, plant, virus, bacterium, yeast or fungus” are proposed to be replaced with “organism” in the Act so that the provision applies to the full range of taxonomic descriptors (Item 1).

**Item 19: Subsection 18(2)**

29. This item replaces the reference in the subsection to an “animal, plant, virus, bacterium, yeast or fungus” with a reference to “any organism”. All references to “animal, plant, virus, bacterium, yeast or fungus” are proposed to be replaced with “organism” in the Act so that the provision applies to the full range of taxonomic descriptors (Item 1).

**Item 20: Subparagraph 19(1A)(b)(i)**

30. This item removes the offence to cause death or injury to a “native invertebrate” in the Antarctic. The amendments to Annex II define what constitutes “taking” of native invertebrates, which is supported by the offence under the new proposed subparagraph 19(1A)(b)(iia) (Item 22). This item is consequential to the creation of that offence.

**Item 21: Subparagraph 19(1A)(b)(ii)**

31. This item removes the offence to cause the taking of a “native invertebrate” in the Antarctic. The amendments to Annex II define what constitutes “taking” of native invertebrates, which is supported by the offence under the new proposed subparagraph 19(1A)(b)(iia) (Item 22). This item is consequential to the creation of that offence.

**Item 22: After subparagraph 19(1A)(b)(ii)**

32. This item inserts a new proposed subparagraph 19(1A)(b)(iia) that outlines the offence of causing the taking of native invertebrates or native plants supported by the new proposed definition of *take* (Item 3).

**Item 23: Subparagraph 19(1A)(b)(iii)**

33. This item removes the offence of causing interference to a native invertebrate in the Antarctic. This item is consequential to the creation of the offence under the new proposed subparagraph 19(1A)(b)(iia), reflecting the new proposed definition of *take* of native invertebrates (Item 3).

**Item 24: Subparagraph 19(1A)(b)(iiia)**

34. This item removes the phrase in the subparagraph “seal; or” and substitutes the word “seal.” as a consequence of the repeal of the offence at subparagraph 19(1A)(b)(iv) (Item 25).

**Item 25: Subparagraph 19(1A)(b)(iv)**

35. This item repeals the subparagraph as causing harmful interference with native plants is already provided for as an offence under subparagraph 19(2)(ea) of the Act.

**Item 26: Paragraph 19(1)(c)**

36. This item replaces the reference in the paragraph to an “animal, plant, virus, bacterium, yeast or fungus” with a reference to “an organism”. All references to “animal, plant, virus, bacterium, yeast or fungus” are proposed to be replaced with “organism” in the Act so that the provision applies to the full range of taxonomic descriptors (Item 1).

**Item 27: After paragraph 19(1)(caa)**

37. This item inserts a new proposed paragraph 19(1)(cab) that makes it an offence for a person to bring any living bird into the Antarctic. Previously a living native bird could be brought into the Antarctic by permit. As a result of this item it will not be possible to reintroduce native birds that have been removed from the Antarctic or to introduce from populations outside the Antarctic living specimens of native bird species. This prohibition seeks to address the risk of introducing diseases into the Antarctic.

**Item 28: Paragraph 19(2)(g)**

38. This item repeals the current paragraph and substitutes a new paragraph 19(2)(g) that omits the reference to food. The item is consequential to the introduction of the offence under the new proposed section 19AD that requires adequate controls be in place for food brought into the Antarctic to ensure organisms brought into Antarctica as food do not escape (Item 30).

39. This item also replaces the reference in the paragraph to an “animal, plant, virus, bacterium, yeast or fungus” with a reference to “an organism”. All references to “animal, plant, virus, bacterium, yeast or fungus” are proposed to be replaced with “organism” in the Act so that the provision applies to the full range of taxonomic descriptors (Item 1).



**Item 29: Paragraph 19(3)(b)**

40. This item replaces the reference in the paragraph to an “animal, plant, virus, bacterium, yeast or fungus” with a reference to “the organism”. All references to “animal, plant, virus, bacterium, yeast or fungus” are proposed to be replaced with “organism” in the Act so that the provision applies to the full range of taxonomic descriptors (Item 1).

41. This item also removes the reference to “not being a live bird” as a consequence of the introduction of the offence under the proposed new subsection 19AD(1) that prohibits a person from bringing any live animals into the Antarctic for use as food (Item 30).

**Item 30: After section 19AB**

42. This item inserts new proposed sections 19AC to 19AE as described below.

43. Section 19AC creates a new offence of bringing into the Antarctic a non-native micro-organism as a consequence of bringing into the Antarctic an organism or an article. Subsection 19AC(2) specifies that there is no offence if the person has brought the organism or article into the Antarctic for use as food. The offence is not committed if the person has taken all reasonable precautions to ensure that non-native micro-organisms were not brought into the Antarctic. The offence also does not apply where the micro-organism is brought into the Antarctic by under a permit or by a recognised foreign authority.

44. This offence is intended to cover all accidental introductions of micro-organisms, other than if the carrier organism or article is brought into the Antarctic for use as food. Recognising that in practice it is not possible to completely ensure that no micro-organisms are brought into the Antarctic with organisms or articles, the offence provision is set up in a way that an offence has not occurred if the person has taken all reasonable precautions to prevent the accidental introduction.

45. The offence also includes the provision for certain actions done in an emergency identical to other offence provisions related to the environment in the Act.

46. Section 19AD creates three new offences related to the importation of food into the Antarctic.

47. Subsection 19AD(1) creates an offence to bring a live animal into the Antarctic for use as food. This is because the introduction of organisms other than cultivated plants is only permitted for controlled experimental use, and the provisions of the Act currently do not exclude the introduction of live animals as food. The intention of the offence is to further reduce the risk of the introduction of non-indigenous organisms into the Antarctic.

48. Subsection 19AD(2) creates an offence for a person to bring an organism into the Antarctic for use as food without putting controls in place that ensure the organism does not escape into the environment. This is to further reduce the risk of introducing non-indigenous organisms into the Antarctic.

49. Subsection 19AD(3) creates an offence to bring poultry or any food product derived from a bird into the Antarctic that is contaminated with disease. This is to reduce the risk of transferring harmful diseases such as Newcastle's Disease, tuberculosis and yeast infections to native bird populations. There is no offence if the person has taken all reasonable precautions to ensure that diseases were not inadvertently introduced with poultry or any food product derived from a bird. The offence is intended to cover all poultry and bird products to be used as food.

50. Section 19AE creates an offence to bring into or keep in the Antarctic a non-native organism that poses a risk to native fauna and flora. The offence requires the person who committed the offence to, as soon as is reasonably practical, remove or destroy the non-native organism, as well as any progeny, and take reasonable steps to control the consequences of the introduction. This offence does not apply where the organism is brought into the Antarctic in accordance with a permit or by a recognised foreign authority.

51. Subsection 19AE(3) specifies that the offence to not remove or destroy the organism, or its progeny, does not apply if it is not feasible, if the removal or destruction would result in a greater adverse environmental impact, or if the organism is to be used for food. The onus rests with the person who committed the offence to justify that the response actions would not be feasible or would result in greater adverse environmental impact.

### **Item 31: Paragraphs 29(2)(f) and (g)**

52. This item replaces the reference in each of the paragraphs to an "animal, plant, virus, bacterium, yeast or fungus" with a reference to "organisms". All references to "animal, plant, virus, bacterium, yeast or fungus" are proposed to be replaced with "organism" in the Act so that the provision applies to the full range of taxonomic descriptors (Item 1).

### **Item 32: Schedule 3 (Annex II to the Protocol on Environmental Protection to the Antarctic Treaty)**

53. This item repeals the current Schedule and substitutes a new Schedule in the Act that replaces Annex II with the revised version as outlined in Measure 16.

## **Part 2 – Application and transitional**

### **Item 33: Application and transitional provisions**

54. This item contains application saving and transitional provisions preserving decisions and actions made under the Act prior to the commencement of these amendments, as outlined in the sub-items.

55. Sub-item 1 allows for the amendments to permit related provisions only apply to permits issued on or after commencement. Current permits issued prior to commencement are unaffected.

56. Sub-item 2 relates to offence provisions currently in the Act that have been amended. Acts that contravene the offences, as amended, only apply on or after commencement.

57. Sub-item 3 relates to the offence under proposed new subparagraph 19(1A)(b)(ia) of taking native invertebrates or native plants. The transitional provision is worded such that the action of “taking” would have commenced on or after commencement of the Schedule. As the definition of *take* for native invertebrates and native plants could potentially constitute multiple acts over several periods, the provision ensures that persons are not adversely affected by the change to the offence.

58. Sub-item 4 clarifies specific transitional arrangements ensuring that current permits issued either under the Act or by a recognised foreign authority are preserved as intended at the time of issuance.

59. Sub-item 5 ensures that new offences created under the Schedule apply only to specified conduct on or after commencement.

60. Sub-item 6 ensures that regulations remain current regardless of the change to the provisions of the Act.