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ANTARCTIC (ENVIRONMENT PROTECTION)  
LEGISLATION AMENDMENT BILL 1992

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EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for  
the Arts, Sport, the Environment  
and Territories, the Hon. R.J. Kelly, M.P.)



ANTARCTIC (ENVIRONMENT PROTECTION)  
LEGISLATION AMENDMENT BILL 1992

OUTLINE

This Bill will amend the *Antarctic Treaty (Environment Protection) Act 1980* to give the force of law in Australia to obligations arising from the Protocol on Environmental Protection to the Antarctic Treaty (the Madrid Protocol). Australia adopted the Madrid Protocol on 4 October 1991. The Protocol provides for comprehensive protection of the Antarctic environment and includes a prohibition on mining. The opportunity is also being taken to make a number of other minor amendments.

The principal features are:

to make amendments necessary for Australia's ratification of the Madrid Protocol, including provision for:

- environmental impact assessment in the Antarctic;
- a new system of protected areas in the Antarctic;
- greater protection for Antarctic fauna and flora and their habitat;
- the making of regulations providing for environmental impact assessment procedures, and for waste management and waste disposal;

to incorporate the provisions of the *Antarctic Mining Prohibition Act 1991* (with some amendments which are consistent with the Madrid Protocol) into the *Antarctic Treaty (Environment Protection) Act 1980*. This amendment will commence once the Protocol enters into force, when the Antarctic Mining Prohibition Act will be repealed.

FINANCIAL IMPACT STATEMENT

It is not expected that these measures will have any effect on revenue.

## NOTES ON CLAUSES

### PART 1 - PRELIMINARY

#### Clause 1 - Short title

This clause provides for the Act to be cited as the *Antarctic (Environment Protection) Legislation Amendment Act 1992*.

#### Clause 2 - Commencement

By subclause 2(1), Parts 1 (Preliminary) and 3 (Amendments to the *Antarctic Marine Living Resources Conservation Act 1981*) will commence on the date of Royal Assent to the Act. But for this clause, the provisions would, by reason of subsection 5(1A) of the *Acts Interpretation Act 1901*, come into operation on the twenty-eighth day after the date of Assent.

Subclause 2(2) provides that subsections 12(2) and 17(2) will commence on 1 April 1994. These provisions relate to the keeping of dogs in the Antarctic, which are prohibited by the Madrid Protocol (which is defined in subclause 6(1)) after that date.

Subclause 2(3) provides for the following provisions to commence from a day to be fixed by Proclamation, which may be on or after the date on which the Protocol enters into force:

- subsection 6(2) defines a number of expressions used in provisions to commence from that date;
- section 9 and subsections 13(3) and (4) will incorporate the Protocol's provisions relating to specially protected species;
- paragraph 12(3)(b) will provide that in deciding whether to issue permits, the Minister shall have regard to the Protocol which will replace the Agreed Measures for the Conservation of Antarctic Fauna and Flora which are currently in force;
- subsection 17(3) and section 27 also relate to the replacement of the Agreed Measures with the Protocol;
- section 18 and Part 4, relate to incorporation of the *Antarctic Mining Prohibition Act 1991* (with some minor amendments) into the *Antarctic Treaty (Environment Protection) Act 1980*.

For ease of reference throughout these notes, this subclause will be referred to in terms of 'when the Protocol enters into force' to indicate the application of this subclause.

Subclause 2(4) provides that if the provisions in subclause 2(3) have not commenced within 6 months of the date that the Protocol enters into force they will commence the day after the 6 months expires.

Subclause 2(5) provides for a number of provisions to commence on a day to be fixed by Proclamation, which may be on or after the day on which Annex V to the Protocol (which relates to protected areas) becomes effective. Annex V was concluded by the Antarctic Treaty Consultative Parties at their sixteenth meeting, and its entry into force depends on both the entry into force of the Protocol itself and the recommendation by which the Parties agreed to adopt the Annex. This date may be different from the date on which the Protocol enters into force. All of the provisions listed have the effect of incorporating into the Antarctic Treaty (Environment Protection) Act the new system of Antarctic protected areas to be established by Annex V.

For ease of reference throughout these notes, this subclause will be referred to in terms of 'when Annex V becomes effective' to indicate the application of this subclause.

Subclause 2(6) makes similar provision to that of subclause 2(4), that is, the provisions listed in subclause 2(5) will commence, at the latest, on the day after the expiry of 6 months from when Annex V becomes effective.

Subclause 2(7) provides for the remaining provisions not mentioned above to commence at the end of the period of 6 months from when the Act receives Royal Assent. This will allow for the making of necessary regulations, in particular regulations relating to procedures for environmental impact assessments, and waste management and disposal.

Further explanations of commencement dates are included in the explanation of the individual clauses below.

## **PART 2 - AMENDMENTS OF THE ANTARCTIC TREATY (ENVIRONMENT PROTECTION) ACT 1980**

### **Clause 3 - Principal Act**

References to the Principal Act in this Part are references to the *Antarctic Treaty (Environment Protection) Act 1980*.

### **Clause 4 - Preamble**

This clause will insert new paragraphs in the Preamble of the Principal Act to reflect that the legislation gives effect to the Protocol on Environmental Protection to the Antarctic Treaty (the Madrid Protocol).

### **Clause 5 - Insertion of new heading**

This is a drafting amendment to allow ease of reference by inserting a number of Parts into the Principal Act. By this clause "**Part 1- Preliminary**" is inserted.

### **Clause 6 - Interpretation**

This clause will amend a number of definitions in section 3 of the Principal Act. A number of new definitions are also inserted, and the definitions relating to mining

prohibition as provided for in the *Antarctic Mining Prohibition Act 1991* (with some minor amendments to reflect the Madrid Protocol) are incorporated.

Subclause 6(1) commences as provided by subclause 2(7), that is, 6 months after Royal Assent.

Paragraph 6(1)(a) will insert a reference to native invertebrates in the definition of an animal.

Paragraph 6(1)(b) will insert a reference to 'Part 2' which is being inserted for drafting reasons.

Paragraph 6(1)(c) will amend the definition of the "Seals Convention" to reflect amendments to that Convention. The amendments will be included in new Schedule 2.

It is proposed by paragraph 6(1)(d) to omit the definitions of "native bird" and "native mammal" and substitute new definitions which reflect the extended definitions as provided for in Annex II to the Protocol, and include dead specimens, as follows:

**'native bird'** means any member of the Class *Aves*, at any stage of its life cycle (including eggs), that is indigenous to the Antarctic or comes there seasonally through natural migrations, or any dead specimen of that Class. This will ensure that permits are required to take dead specimens, which are part of the ecosystem of the Antarctic.

**'native mammal'** means any member of the Class *Mammalia*, at any stage of its life cycle, that is indigenous to the Antarctic or comes to the Antarctic seasonally through natural migrations, or any dead specimen of that Class, but excludes whales and seals which are protected under separate international instruments and Australian legislation.

New paragraph 6(1)(e) will insert the following definitions:

**'basic environmental principles'** means the principles set out in Article 3 of the Protocol, which provides that protection of the Antarctic environment, its dependent and associated ecosystems and the intrinsic value of the Antarctic, including its wilderness and aesthetic value and value for scientific research, shall be fundamental considerations in the planning and conduct of all activities in the Antarctic Treaty area.

**'CAMLR Convention'** means the Convention on the Conservation of Antarctic Marine Living Resources, which is implemented into Australian law by the *Antarctic Marine Living Resources Conservation Act 1981*; a copy of the text of the Convention is set out in the Schedule to that Act.

**'CEMP site'** means a monitoring site established under the CAMLR Ecosystem Monitoring Program (CEMP). These are land-based sites established to monitor

predators of marine resources, that is birds and seals, for possible effects arising from fishing activity.

'**Madrid Protocol**' is the Protocol on Environmental Protection to the Antarctic Treaty. The Protocol is accompanied by five Annexes relating to: Environmental Impact Assessment (Annex I); Conservation of Antarctic Fauna and Flora (Annex II); Waste Disposal and Waste Management (Annex III); Prevention of Marine Pollution (Annex IV); and Area Protection and Management (Annex V). A copy of the text is in Schedule 3 with the exception of Annex IV. (Annex IV has been implemented by way of amendment to the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* and a copy of the text can be found in Schedule 12 to that Act.)

'**native invertebrate**' is defined as any terrestrial or fresh water invertebrate, at any stage of its life cycle, indigenous to the Antarctic. Annex II to the Protocol introduces protection of invertebrates as well as other animals and plants.

'**whale**' means any member of the sub-order *Mysticeti* or *Odontoceti* of the order *Cetacea*. Whales are excluded from this Act as they are provided for in the *Whale Protection Act 1980*.

Paragraph 6(1)(f) is a technical amendment which amends subsection 3(3) of the Principal Act in order to reflect an amendment to the *Crimes Act 1914* so that, broadly, a reference to an offence will include conspiracy as provided for in that Act.

By paragraphs 6(1)(g) and (h), subsection 3(5) is amended to reflect that the Protocol will replace the Agreed Measures once it enters into force.

Subclause 6(2) will commence as provided for by subclause 2(3), that is, the date of entry into force of the Protocol.

Paragraph 6(2)(a) reflects that the Protocol will replace the Agreed Measures once it enters into force.

Paragraph 6(2)(b) will amend section 3 by including a reference to native plants in the definition of "specially protected species".

Paragraph 6(2)(c) will omit the definition of "authority of another Contracting Party". A new definition 'recognised foreign authority' is to be inserted as provided for in paragraph 6(2)(c).

Paragraph 6(2)(d) will insert a number of new definitions as follows:

'**Australian national**' is an Australian citizen, a body corporate incorporated in Australia or a body corporate whose activities are mainly carried out in Australia regardless of the place of incorporation.

'**continental shelf**' is to take the meaning that it has in the *Seas and Submerged Lands Act 1973*.

**'mineral'** is to mean any non-living, non-renewable natural resource. This includes fossil fuels, metallic and non-metallic minerals as well as oil and oil shale.

**'mining activity'** is defined to include any acts that are connected with the recovery or exploitation of minerals. Such acts include prospecting and exploring for minerals. It is not the intention to include such activities that would not normally be considered as mining, such as the making of a road or the clearing of a site for a building. The definition excludes activities associated with scientific investigation and scientific research as those terms are used in the Antarctic Treaty. It also excludes those activities necessary for support of such activity, for example, the building, maintenance and supply of stations. The definition will allow the conduct of legitimate geological research. Whilst the terms 'scientific investigation' and 'scientific research' are not defined they are to take the meaning that is implied and accepted under the Antarctic Treaty.

**'recognised foreign authority'** is defined to mean a permit, authority or arrangement that has been issued, given or made by another Party to the Protocol. The definition also takes into account that Annex V, which relates to protected areas, has a different procedure for coming into effect.

By paragraph 6(3)(a) references to "Agreed Measures", "site of special scientific interest" and "specially protected area" will be omitted from subsection 3(1) once Annex V becomes effective. From that date, the existing system of protected areas will be replaced by a new system to be introduced by this Annex.

Paragraph 6(3)(b) will insert new definitions relating to the new protected area system, defined by reference to sections 8 or 8A which describe the procedure for designation of the areas. The following provides information on the areas, as provided for in Annex V to the Protocol:

**'Antarctic specially managed area'** means an area, designated under Article 6 of Annex V, in which a number of activities are being conducted or may, in the future, be conducted. The reason for such areas is to ensure that management will assist in planning and co-ordinating activities, avoid possible conflicts, improve co-operation between Parties, or minimise environmental impacts. An example of such an area would be an area where a number of scientific stations are located close together. Antarctic specially managed areas may include one or more Antarctic specially protected areas and may consist of, or include, historic sites or monuments.

**'Antarctic specially protected area'** means an area designated under Article 6 of Annex V in order to protect outstanding environmental, scientific, historic, aesthetic or wilderness values, any combination of those values, or ongoing planned scientific research. A permit will be required to enter these areas. An historic site or monument may also be designated as an Antarctic specially protected area.

**'historic monument'** means a monument included on the list of Historic Sites and Monuments referred to in Article 8 of Annex V. Any monument of recognised historic value may be listed under Article 8 and thereby be protected under the



specific provisions relating to such monuments. In addition, a recognised historic monument may be designated as, or included within, an Antarctic specially protected area or an Antarctic specially managed area under Article 6, in which case it shall be protected under the provisions relating to the relevant type of protected area.

'historic site' means a site included on the list of Historic Sites and Monuments referred to in Article 8 of Annex V. The further protection accorded to historic monuments also applies to historic sites.

#### **Clause 7 - Act binds Crown**

This clause will amend the current provision to include the Crown in the right of the Australian Capital Territory and of Norfolk Island.

#### **Clause 8 - New section 7A, 7B, etc**

Clause 8 commences 6 months after Royal Assent as provided for in subclause 2(3). It provides for the inclusion of a new section 7A which will require that in exercising powers and performing duties under the Act, the Minister must act in a manner that is consistent with the "basic environmental principles", which will be defined in section 3 (see notes on clause 6).

A new Part will be inserted, "Part 2 - Conservation of Antarctic Fauna and Flora". This Part will broaden the existing provisions relating to protection of fauna and flora, along the lines provided by Annex II to the Madrid Protocol.

New section 7B will provide that, unless the contrary intention appears, and apart from expressions defined in section 3, any expression used both in this Part and in the Agreed Measures has the same meaning as in those Measures. This provision is necessary since the reference to the Agreed Measures will be removed from subsection 3(5), but as Part 2 relates largely to the Agreed Measures it will need to be retained for the purposes of Part 2 until the Protocol enters into force.

#### **Clause 9 - Insertion of new section 7C**

This clause will insert new section 7C, which will not commence before the Madrid Protocol enters into force, and provides for declaration of species of native mammals, birds or plants as specially protected species, if they are so designated under Annex II to the Protocol. Subsections 8(7) and (8) of the Principal Act currently provide for the designation of specially protected species of mammals and birds; the Protocol also accords this protection to species of plants. New subsection 7C(2) will continue the protection of currently designated specially protected species, so that it will not be necessary to make a further declaration once the Protocol enters into force. (Subsections 8(7) and 8(8) will be repealed at the same time that new section 7C commences). Provision is made for specially protected species to be declared as such by a notice in the *Gazette*. Any variation or revocation of a declaration must also be by a notice in the *Gazette*.

#### **Clause 10 - Repeal of section 7B**

New section 7B will be repealed once Annex V becomes effective as it will no longer be necessary to refer to the Agreed Measures, which will be replaced by Annexes II and V to the Madrid Protocol.

### **Clause 11 - Antarctic specially protected areas etc.**

Section 8 of the Principal Act currently provides for the designation of protected areas and specially protected species.

Clause 11 will repeal section 8 of the Principal Act and insert new section 8, which will provide for a new protected area system in accordance with Annex V to the Madrid Protocol. These provisions will not commence until Annex V becomes effective.

New subsection 8(1) repeats the definition of 'area' currently provided in subsection 8(1) of the Principal Act.

New subsection 8(2) will provide for the declaration by the Governor-General of Antarctic specially protected areas or Antarctic specially managed areas.

New subsection 8(3) will provide that designation of areas by the Antarctic Treaty Consultative Parties under Article 6 of Annex V is necessary before a declaration may be made under new subsection 8(2).

New subsection 8(4) is in effect subsection 8(5) of the Principal Act but will be amended to reflect the new protected areas regime. It will provide for designated areas to include the depth of subsoil, the waters and sea-bed below any ice shelf or sea and subsoil below any sea-bed that may be specified (if any).

New subsection 8(5) provides that an area that was declared a specially protected area or site of special scientific interest before the commencement of this section will be taken to have been declared to be an Antarctic specially protected area under subsection (2) when the section commences.

New subsection 8(6) provides for variation of the boundaries of a protected area, or revocation of a declaration in respect of such an area, if such variation or revocation has been adopted by the Antarctic Treaty Consultative Parties.

New subsection 8A(1) provides for the declaration by the Governor-General of historic sites and monuments and new subsection 8A(2) provides that such a declaration may only be made after a site or monument has been listed by the Antarctic Treaty Consultative Parties in accordance with Article 8 of Annex V.

New subsection 8A(3) will provide for variation or revocation of a declaration of an historic site or monument, if such variation or revocation has been adopted by the Antarctic Treaty Consultative Parties.

New sections 8 and 8A commence when Annex V becomes effective.

### **Clause 12 - Grant and renewal of permit**

Clause 12 will amend section 9 of the Principal Act. Subsection 9(1) currently provides that the Minister, on such conditions as he or she thinks fit, may grant permits authorising activities which would otherwise be prohibited under section 19 of the Act.

Subclause 12(1), which commences 6 months after Royal Assent, will:

- amend subsection 9(1) by inserting a reference to new paragraph 19(1)(ca), inserted by subclause 17(1), to preclude grant of a permit to import certain substances into the Antarctic (paragraph (a)).
- insert new subsection 9(1A) to provide that permits shall specify the area in which an activity is to be carried on (paragraph (b)).
- insert new subsection 9(2A) which will provide that the Minister may not issue a permit to which Part 3 (environmental impact assessment) applies unless the Minister has authorised the proponent of the activity to carry on the activity (paragraph (c)). This will ensure that an environmental impact assessment is carried out where necessary in respect of an activity for which a permit is required, before a permit may be issued.
- insert new subsection 9(2B) which will provide that the Minister may not grant a permit authorising a person to enter or carry on an activity in a CEMP site unless a permit authorising the person to enter the site has been granted either under regulations under the *Antarctic Marine Living Resources Conservation Act 1981* or by another Contracting Party to the Convention on the Conservation of Antarctic Marine Living Resources (paragraph (c)). The terms 'CEMP site' and 'CAMLR Convention' are defined in subclause 6(1). This provision is necessary to take into account a new system of protected areas to be established under the CAMLR Convention, which aims to protect land-based sites where monitoring of marine predators (such as penguins and seals) is carried out. The permit system to be established under regulations under the Antarctic Marine Living Resources Conservation Act will restrict entry to such sites, and will also regulate activities in them. However, to ensure that Australia continues to comply with its obligations under the Agreed Measures, and later the Madrid Protocol, it is necessary to provide that persons intending to carry out activities in CEMP sites (for example weighing or tagging penguins) also have a permit under the Principal Act.
- by paragraph (d) omit subsection 9(6), which is a power to make regulations in respect of fees for the grant of permits. This provision will be included in section 29 (see notes on clause 25).

Subclause 12(2) will amend subsection 9(1) by inserting a reference to new paragraph 19(1)(caa) and by omitting a reference to existing paragraph 19(2)(f). These amendments will preclude the issue of a permit to allow a dog to run free, since the keeping of dogs will be prohibited. These amendments will commence on 1 April 1994, which is the date the Protocol prohibits the introduction or keeping of dogs in the Antarctic.

Subclause 12(3) will amend section 9 to:

- insert a reference to new paragraph 19(1)(f) in subsection 9(1) (paragraph 12(3)(a)). This is a minor drafting amendment to ensure consistency between the amendments to subsections 9(1) and 19(1), and will not commence until Annex V becomes effective.
- omit "Agreed Measures" from subsection 9(2) and substitute "Madrid Protocol" (paragraph 12(3)(b)). This will ensure that in deciding whether to issue permits under subsection 9(1) the Minister will have regard to the purposes and principles of the Protocol rather than the Agreed Measures, which will be superseded by the provisions of the Protocol. This provision commences when the Protocol enters into force.

#### **Clause 13 - Restrictions applicable to permits**

Clause 13 will amend section 10, which provides that permits may only be granted in certain circumstances and with certain restrictions.

Subclause 13(1) will make minor amendments to subsection 10(1), which specifies circumstances in which permits may be issued to undertake activities involving animals.

Subparagraph 10(1)(a)(ii) will be amended to provide that the Minister shall not issue a permit to kill, take, injure or otherwise interfere with a native bird or native mammal unless (among other considerations) the habitats essential to their existence will be maintained (paragraph 13(1)(a)).

Paragraph 13(1)(b) will omit subparagraph 10(1)(b)(i) which provides that permits may be issued where necessary to provide essential food for humans or working dogs. This provision is no longer necessary, since the presence of dogs is to be prohibited, and because subsection 19(3) provides that an offence is not committed where an action which would otherwise be contrary to the Act is done in cases of emergency (which could involve the taking of an animal for essential food).

Paragraph 13(1)(b) will also insert new subparagraph 10(1)(b)(i) to provide that one of the circumstances in which a permit may be issued is to the extent that it is necessary for the construction and operation of scientific support facilities.

Subparagraph 10(1)(c) of the Principal Act provides that a permit may only be issued in the case of a specially protected species of animals if (i) it is required for a compelling scientific purpose, and (ii) the Minister is satisfied that the activities authorised by the permit will not jeopardise the existing ecological system or the survival of that species. Paragraph (c) of subclause 13(1) will amend subparagraph 10(1)(c)(ii) so that the Minister must also be satisfied that the activities will not jeopardise the recovery of that species or of the local population of birds or mammals. This will widen the existing protection.

New subsection 10(1A) inserted by paragraph 13(1)(d) will provide that a permit authorising a person to kill, take, injure or otherwise interfere with native bird or mammal must specify as a condition that the bird or mammal is to be dealt with in the manner that involves the least degree of pain and suffering practicable. This reflects a requirement of Annex II to the Madrid Protocol.

Paragraph 13(1)(d) will also insert new subsection 10(1B) which will extend to plants the existing protection of mammals and birds provided by subsection 10(1). New paragraph 10(1B)(a) will specify restrictions on the grant of permits to gather, collect, damage or otherwise interfere with a native plant. These will require that the Minister is satisfied, after taking into account the number of plants of any species that may be affected because of that permit and all other relevant permits, that the variety of species of native plants, the habitats essential to the existence of the native animals and native plants, and the balance of the natural ecological systems existing within the Antarctic will be maintained.

New paragraph 10(1A)(b) will require that permits will only be issued to the extent that they are necessary for providing specimens for scientific research, public education or such other educational or cultural purposes as the Minister thinks fit, and the construction and operation of scientific support facilities.

Paragraph (d) will also insert new subsection 10(2), which will not allow a permit to be granted to authorise the bringing into the Antarctic a dog, or a live bird that is not indigenous to the Antarctic. A consequential amendment to subsection 10(3) inserted by paragraph 13(1)(e) will ensure that no doubt arises.

Paragraph (f) of subclause 13(1) will omit paragraph 10(4)(b) of the Principal Act, which requires that any permit allowing the introduction of a non-indigenous specimen is to include a condition that such specimen be removed from the Antarctic or destroyed after it has served its purpose. New paragraph 10(4)(b) will strengthen this to require removal or destruction either as soon as possible after it has served its purpose, if this occurs before the permit ceases to be in force. This is consistent with the requirements of the Protocol to prevent escape of non-indigenous organisms.

Subsection 10(5), which prescribes conditions to be placed on permits allowing the importation of dogs to the Antarctic, will be omitted since such importation will be prohibited (paragraph 13(1)(g)).

Paragraph (g) will also insert new subsection 10(5), which will provide that a permit authorising a person to bring into the Antarctic animals or plants that are not indigenous to the Antarctic must specify the number, species and, in the case animals, the age and sex of the animals. A permit must also specify as a condition that the person must take all reasonable precautions to prevent any of the animals from escaping or any of the plants or animals from coming into contact with the native fauna or flora. This broadens the protection currently provided to indigenous species from possible introduction of non-indigenous species and reflects the requirements of the Protocol.

Subsection 10(6) specifies that permits may only be issued to allow an activity to be carried on in a specially protected area in certain circumstances. New paragraph 10(6)(c) will provide that if there is a management plan for the area then activities must be carried out in accordance with that plan (paragraph 13(1)(h)). This requirement was introduced at the fifteenth Antarctic Treaty Consultative Meeting. This provision will be replaced with a new paragraph when Annex V becomes effective.

Amendments made by subclause 13(1) commence 6 months after Royal Assent.

Subclause 13(2) provides that these amendments to section 10 do not apply in relation to permits granted before the commencement of these provisions.

Subclause 13(3) makes further amendments to subsection 10 of the Principal Act, however these amendments will not commence until the Protocol enters into force.

New paragraph 10(1B)(c) will provide that in deciding whether to issue a permit in respect of a specially protected species of plant, the Minister must ensure that the permit is only issued for a compelling scientific purpose, and that the activities will not jeopardise the existing ecological system or the survival or recovery of that species or of the local population of plants of that species (paragraph 13(3)(a)). Annex II introduces protection for specially protected species of plants, which is currently only provided for in respect of mammals and birds.

Paragraph (b) of subclause 13(3) will remove the reference to the Agreed Measures in subsection 10(3) and insert a reference to Annex II to the Madrid Protocol. This is necessary to ensure that in issuing permits the Minister is required to have regard to the Protocol when it replaces the Agreed Measures.

Amendments made by subclause 3 do not commence until the Protocol enters into force.

Subclause 13(4) provides that the amendments made to section 10 by subclause 13(3) do not apply in relation to permits granted before commencement of the new subsection. This provision will commence when the Protocol enters into force.

Subclause 13(5) will make further amendments to section 10 necessary for the implementation of the new protected areas system as provided for in Annex V. These amendments will not commence until Annex V becomes effective. These amendments will:

- remove from subsection 10(6) the reference to "a specially protected area" and substitute "an Antarctic specially protected area in respect of which a management plan has not been adopted" (paragraph 13(5)(a)). Antarctic specially protected areas will be designated under Article 6 of Annex V by adoption of a management plan for the area, however, existing specially protected areas will automatically be designated Antarctic specially protected areas on commencement of Annex V. While the Treaty Parties recommended at their fifteenth Consultative

Meeting that management plans be prepared for all specially protected areas, it is possible that not all such plans will have been prepared by the commencement of Annex V, and there will therefore be Antarctic specially protected areas in respect of which no management plan has been prepared. In these cases, the criteria currently governing the issue of permits to enter specially protected areas will continue to apply.

- paragraph 13(5)(c) will omit paragraph 10(6)(c) which is being inserted pending Annex V becoming effective. This provision, inserted by paragraph (h) of subclause 13(1), provides that a permit may not authorise an activity to be carried on in a specially protected area unless the activity can be carried on in accordance with the management plan, if any, for the area. This provision will be removed with the commencement of Annex V since such specially protected areas will no longer exist.
- insert new subsection 10(7) which will provide that, in respect of Antarctic specially protected areas for which a management plan has been prepared, a permit cannot authorise entry or activities which are not in accordance with the management plan (paragraph 13(5)(c)).
- insert new subsection 10(8) which will require that each permit in respect of an Antarctic specially protected area must specify as a condition that the person must have the permit in his or her possession when the person is in the area (paragraph 13(5)(c)). This reflects a requirement of Annex V, and will mean that an offence is committed if such a condition is breached (section 20 of the Principal Act).

Subclause 13(6) will provide that the amendments made by subclause 13(5) in relation to protected areas do not apply in relation to permits granted before the commencement of the subclause.

#### **Clause 14 - Variation, suspension and revocation of permits**

Subsection 11 of the Principal Act allows the Minister to vary, suspend or revoke a permit in certain circumstances if he or she believes it is necessary either because a provision of the Act in relation to the permit or a condition of the permit has been contravened or to ensure the conservation and protection of fauna and flora.

Clause 14 will insert new subsection 11(1A) to provide that a permit holder may request, with reasons, variation of a permit if reasons for the variation are given. The Minister may vary the permit if he or she is satisfied that the variation is justified by the reasons given in the request, and that the variation would not authorise any activity likely to affect adversely the conservation or protection of the fauna and flora of the Antarctic.

#### **Clause 15 - Environmental impact assessment**

Clause 15 will insert a new Part - "**Part 3 - Environmental Impact Assessment**" - to provide for a new procedure in relation to environmental impact assessment as required by the Madrid Protocol. This Part will embody the general principles of Article 8 of the Protocol and Annex I which apply to the planning of Antarctic

activities, and will provide the Minister with certain powers in relation to the new assessment process. Regulations will implement the detailed procedural aspects.

The arrangements will require that all activities proposed to be conducted in the Antarctic Treaty area are subject to prior assessment of their likely impacts on the Antarctic environment and dependent and associated ecosystems. In accordance with Annex I, the assessment process will have the following three components:

- determination as to whether a proposed activity is likely to have no more than a negligible impact on the environment and may proceed or, alternatively, requires a higher level of assessment.
- an initial environmental evaluation (IEE) which is to be carried out in all cases unless it has been determined that the proposed activity would have no more than a negligible impact on the environment, or unless a comprehensive environmental evaluation is being carried out. The aim of the IEE is to enable a determination of whether a proposed activity would have no more than a minor or transitory impact on the environment, and to enable identification of possible alternatives and of measures for assessing and verifying the impacts of the activity.
- a comprehensive environmental evaluation (CEE) which is to be prepared where it has been determined that a proposed activity is likely to have more than a minor or transitory impact. The CEE is a detailed examination of the proposal, its potential impacts and possible alternatives, and measures to minimise, mitigate, verify and assess the impacts.

In all cases the proponent will be responsible for preparing, or causing to be prepared, the required assessments.

Notes on the proposed provisions of the new Part follow.

#### Section 12A - Interpretation

'environment' is to be defined for the purposes of this Part to ensure that the proponents of activities, which are to be undertaken in the Antarctic Treaty area, also consider the likely impacts of those activities on dependent and associated ecosystems outside the Antarctic Treaty area. The intention is to ensure that evaluations consider all the relevant environmental impacts of the activities to be conducted in the Antarctic Treaty area rather than only those impacts likely to occur in the area south of 60° south latitude. However, activities conducted outside of the Antarctic Treaty area do not come within the ambit of the regime even if some of the impacts of such an activity may occur in the Antarctic Treaty area.

#### Section 12B - Object of Part

New Section 12B outlines the object of new Part 3 which will provide for the environmental impact assessment of activities proposed to be conducted in the Antarctic, and the regulation of activities that are likely to adversely impact upon the environment.



### Section 12C - Part does not apply to certain activities

It is proposed by new subsection (1) that the Minister may determine that specified kinds of activities will not require written environmental impact assessments, on the basis that those types of activities are likely to have no more than a negligible impact on the environment.

New subsection (2) provides that, in addition to activities of a kind specified in a determination under subsection (1), the proposed environmental impact assessment procedures will not apply to any mining activity. Mining activity (a defined term) is prohibited. This latter exclusion is to ensure consistency with new sections 19A (which prohibits mining activity in Australian Antarctic Territory) and 19B (which prohibits mining activity by Australian nationals elsewhere in the Antarctic Treaty area). Mining activity, by virtue of the definition, excludes scientific activities (see notes on clause 6) and accordingly scientific activities will fall within the ambit of this Part.

### Section 12D - Preliminary assessment of likely impact of activity on Antarctic environment

New subsection (1) will require the 'proponent of the activity' (that is, a person or organisation) to either prepare themselves, or have prepared by some other person or body on their behalf, a written report of the preliminary assessment of the proposed activity. By paragraph (a) this will apply to all activities in the Australian Antarctic Territory, and by paragraph (b) to Australians anywhere else in the Antarctic.

The intention of new subsection (2) is to ensure that the environmental impact assessment procedures are applied not only to new activities proposed to be conducted in the Antarctic Treaty area, but also to any change in the intensity of ongoing activities that were either being conducted prior to commencement of this Part or have been authorised to be carried on under this Part. The decommissioning of a facility is an example of the type of change that would require assessment. The intention is to ensure that all potentially damaging activities are adequately assessed.

### Section 12E - Preliminary determination of likely impact of activity

This section will require that the Minister make a determination (in accordance with any procedures to be detailed in regulations under the Act) as to the level of environmental impact that a proposed activity is likely to have. The Minister will also be required to inform the proponent in writing of the determination. The object of the determination is to indicate whether a higher level of assessment (an initial or comprehensive environmental evaluation) is necessary or whether the activity may be authorised to proceed without further environmental evaluation.

### Section 12F - Activity to proceed if impact negligible

New section 12F provides that, following determination that a proposed activity is likely to have no more than a negligible impact on the environment, the Minister is to authorise a proponent to proceed with that activity. Such authorisation is to be by notice in writing and may be given subject to specified conditions. These conditions (if any) will be imposed to ensure that the activity has no more than a negligible impact on the environment. Such conditions may, for example, limit the number of

personnel involved in an activity at a particular location or restrict the timing of the activity to avoid biologically sensitive periods.

#### Section 12G - Initial environmental evaluation

Consistent with the Protocol, new subsection (1) provides that an IEE will have to be prepared for activities determined as likely to have a minor or transitory impact on the environment. In addition, the intention of this subsection is to formally make the proponent responsible for preparing, or arranging the preparation of, any IEE required and for its forwarding to the Minister.

New subsection (2) provides that an IEE is to be in the form of a written report which by paragraph (a) must contain, amongst other things, the matters required under the regulations. The intention of paragraph (b) is to ensure that any conclusion regarding the level and extent of the likely environmental impacts of an activity will be made on the basis of adequate information and analysis. Paragraph (c) will require that the IEE includes recommendations as to appropriate measures for assessing and verifying the actual impacts of the activity in those cases where the assessment indicates that the environmental impacts are likely to be minor or transitory. These measures will be required to ensure that activities do not continue in cases where they are causing unacceptable or unforeseen impacts on the environment.

New subsection (3) will ensure that an IEE contains sufficient information and analysis to enable the Minister to make an informed determination regarding the level and extent of likely environmental impacts and regarding the imposition of conditions in respect of authorisation for the proposed activity.

#### Section 12H - Determination of likely impact of activity based on initial environmental evaluation

New section 12H will require that, on the basis of the IEE prepared, the Minister make a determination as to the level of environmental impact that a proposed activity is likely to have. The Minister will also be required to inform the proponent in writing of the determination. The object of the determination is to indicate whether a higher level of assessment (a comprehensive environmental evaluation) is necessary or whether the activity may be authorised to proceed without further evaluation.

#### Section 12J - Authorisation of activity likely to have minor etc. impact on environment

The intention of new subsection (1) is to enable the Minister to authorise the undertaking of an activity that he or she has determined is likely to have only a minor or transitory impact on the environment. Such authorisation is to be by notice in writing.

Subsection (2) provides that an authorisation to proceed may be given subject to specific conditions (aimed at ensuring consistency with the basic environmental principles established in the Protocol). Subsection (3) proposes that these conditions must, as a minimum, include the requirement that specified procedures to assess, verify and minimise environmental impacts are complied with during the conduct of the activity. The intention of the assessment and verification conditions is to ensure that anticipated impacts remain within authorised levels and that unforeseen

impacts are detected at an early stage. Minimisation conditions will be aimed at reducing the adverse impacts of an activity by, for example, limiting the number of personnel involved in an activity at a particular location or restricting the timing of the activity to avoid biologically sensitive periods.

Subsection (4) provides that an authorisation for an activity to proceed may also be subject to any prescribed environmental protection conditions in regulations.

#### Section 12K - Comprehensive environmental evaluation

Subsection (1) provides that, if the Minister makes a determination that an activity is likely to have more than a minor or transitory impact on the environment, the proponent of the activity will be required to arrange preparation of a draft and a final CEE in respect of the activity and provide these to the Minister. These assessments will be required not only to facilitate national decision making but also to meet Australia's international obligations under the Protocol, which include the circulation of such documents to other Treaty Parties for comment. The final CEE will be required after the draft CEE has been circulated and considered according to the procedures provided for under the regulations.

New subsection (2) provides for certain matters in relation to a CEE. By paragraph (a) draft and final CEEs are to contain, amongst other things, the matters required under the regulations. Paragraph (b) will require that the documents include a comprehensive assessment of the environmental impacts of the activity. Paragraph (c) will require that the documents include recommendations as to appropriate measures for assessing and verifying the actual impacts of the activity.

New subsection (3) provides for regulations to be made in relation to the detailed procedures for dealing with draft and final CEEs.

#### Section 12L - Authorisation of activity likely to have more than minor etc. impact on environment

New subsection (1) will require that the Minister make a decision on whether or not to authorise the carrying out of a proposed activity, after the final CEE has been dealt with in accordance with the regulations.

New subsection (2) provides that the Minister is to authorise an activity to proceed if he or she is satisfied that the activity, either as originally proposed or incorporating any required modifications, can be undertaken in a manner which is not contrary to the basic environmental principles (as defined). In arriving at a decision on this matter, the Minister will take into account the contents of the final CEE prepared on the activity and any other relevant consideration (which may include additional comments or information received regarding the likely environmental impacts of the proposed activity). An authorisation to proceed with an activity, either as proposed or modified, must be in the form of a notice published in the *Gazette*. Such notification will meet Australia's obligation under the Protocol that all decisions relating to CEEs be made publicly available.

New subsection (3) provides that an authorisation to proceed may be given subject to specific conditions aimed at ensuring consistency with the basic environmental

principles (as defined). These conditions will include such matters as the requirement that procedures (such as appropriate monitoring of key environmental indicators) are put in place to assess and verify the actual impacts of the proposed activity. The intention of these procedures will be to enable assessments to be made of the extent to which impacts are consistent with the Protocol and to provide information useful for minimising or mitigating impacts and, where appropriate, information on the need for suspension, cancellation or modification of the activity.

Subsection (4) provides that an authorisation for an activity to proceed may also be subject to any prescribed environmental protection conditions.

Subsection (5) provides that the Minister must not authorise the carrying out of an activity if he or she is not satisfied that the activity can be carried out in a manner which is consistent with the basic environmental principles. The intention of this subsection is to provide the Minister with the power to prevent the conduct of an activity which is considered likely to have unacceptable impacts on the environment.

Subsection (6) proposes that in those cases that the Minister decides not to authorise an activity, this decision and the reasons behind it must be notified in the *Gazette*. Such notification will meet Australia's obligation under the Protocol that all decisions relating to CEEs be made publicly available.

#### Section 12M - Notice of authorisation

Subsection (1) provides that, to avoid possible confusion, any notice of authorisation given by the Minister in accordance with the environmental impact assessment process will describe the activity that is authorised.

Subsection (2) provides that a notice of authorisation may specify that the authorisation extends to those who will carry out the activity on behalf, or under the control, of the proponent.

#### Section 12N - Variation, suspension and revocation of authorisation

New subsection (1) provides for the Minister to vary an authorisation if he or she is satisfied that it is necessary to do so to act consistently with the basic environmental principles (as defined). The intention of this subsection is to enable the Minister, on his or her own motion, to make variations to an authorisation as and when necessary to protect the environment.

New subsection (2) will enable the Minister to vary an authorisation, on the basis of a written request to this effect from the person authorised to carry on the activity. To vary the authorisation the Minister must be satisfied that the reasons given in the request justify the variation and that the variation would not be inconsistent with the basic environmental principles. The intention of this subsection is to facilitate changes that may be required to an authorisation such as, for example, the timing of the activity or the persons authorised to undertake the activity on behalf of the proponent.

New subsection (3) provides for the Minister to suspend or revoke an authorisation if he or she is satisfied that a condition of the authorisation has not been, or is not

being, complied with, or if it is necessary to do so for consistency with the basic environmental principles established under the Protocol. A suspension or revocation will be effected by the Minister giving notice in accordance with the regulations. The intention of this subsection is to provide the Minister with the power to ensure that environmental conditions are complied with and that activities with unforeseen and unacceptable impacts cease.

New subsections (4) and (5) propose that an authorisation will remain suspended for a period specified in the notice of suspension (up to a maximum of 90 days) unless, during this period, proceedings have commenced for an offence relating to the carrying out of the proposed activity. In such cases the suspension may continue until all proceedings are completed. The intention of these subsections is to ensure that activities are not unreasonably delayed unless there is reasonable evidence that an offence has been committed.

#### Section 12P - Variation etc. of conditions

This section will provide for the Minister to vary or revoke any conditions, or impose further conditions, in relation to an authorisation for an activity. Variations may be required, for example, as a result of operational circumstances which may affect the timing of an activity. Revocation of conditions may be necessary in the light of additional information received regarding the likely or observed impact of the activity or where an offence is alleged. Any such change in the conditions applying to an authorisation will be effected by the Minister giving notice in accordance with the regulations.

#### Section 12Q - Monitoring of activities

This section proposes that the regulations may provide for the monitoring of authorised activities to assess their environmental impacts and to determine their compliance with authorisations. This section will provide for the making of regulations so that information useful for minimising or mitigating impacts and, where appropriate, information on the need for suspension, cancellation or modification of an activity can be sought.

A new heading will be inserted - "**Part 4 - Inspectors**"- however no amendments are made to the sections concerning inspectors.

#### Clause 16 - Insertion of new heading

This clause will insert a new heading - "**Part 5 - Offences**".

#### Clause 17 - Offences relating to the environment

Subsections 19(1) and (2) of the Principal Act prohibit a range of activities which are potentially harmful to the Antarctic environment. Subsection 19(3) (see below) then excludes the operation of subsections (1) and (2) in various circumstances.

Subclause 17(1), which commences 6 months after Royal Assent, will amend subsection 19(1) of the Principal Act by:

- including in paragraph (1)(a) "native invertebrate" along with native bird and native mammal, so that none of these animals may be killed,

taken, injured or otherwise interfered with (without a permit) (paragraph 17(1)(a)).

- inserting new paragraph (ca) to prohibit the bringing into and keeping in the Antarctic of non-sterile soil, polychlorinated biphenyls, or polystyrene beads or chips or any similar kind of packaging material (paragraph 17(1)(b)). These all pose dangers to the environment. In the case of non-sterile soil there is always the risk of non-indigenous bacteria and viruses being introduced. Polychlorinated biphenyls are particularly toxic substances. Polystyrene chips and beads easily blow away in the wind and can be ingested by the birds and animals. Paragraph (h) of subclause 17(1) proposes to amend subsection 19(3) of the Principal Act so that these activities may not be authorised by permit.
- inserting new paragraph (cb) which will prohibit the introduction to, or keeping of, any pesticide in the Antarctic (paragraph (b)). New paragraph 19(3)(ba), to be inserted by paragraph (g), will provide that this prohibition does not apply where the pesticide is to be used for scientific, medical or hygienic purposes.

Amendments to subsection 19(2) of the Principal Act proposed by subclause 17(1) will:

- substitute 'use' for 'fly' in paragraph 19(2)(a), so that the current prohibition of flying an aircraft in such a manner as to disturb a concentration of birds will be extended to any use of an aircraft, for example landing or taking off (paragraph 17(1)(c)).
- replace paragraphs (2)(b),(c) and (d) with new paragraphs. These paragraphs currently prescribe distances within which an activity may not take place, for example, a vehicle may not be driven within 200 metres of a concentration of birds (paragraph 19(2)(b)). The proposed amendment would remove these distances and use the formula "in a manner that disturbs a concentration of birds". This will provide greater protection to fauna, for example distracting activity in one location may disturb birds 500 metres away, however in another location, birds much closer may not be disturbed, perhaps because the activity is hidden from view (paragraph 17(1)(d)).
- replace paragraph (e) with a new paragraph, which would extend the current prohibition of disturbance of a concentration of breeding birds while on foot to any concentration of birds, or any bird which is breeding or moulting (paragraph 17(1)(d)).
- insert new paragraph (ea) which will prohibit the carrying out of any activity which results in the significant adverse modification of the habitat of any species of native mammal, bird, invertebrate or plant, or any population of such animals and plants (paragraph 17(1)(d)). The phrase "adversely modified to a significant extent" is not easy to define

and should be dealt with on a case by case basis in the Minister's consideration of the issue of permits and conditions to impose, taking into account the results of any environmental impact assessment, proposed to be included by clause 15.

Subsection 19(3) of the Principal Act excludes the operation of subsections 19(1) and (2) in certain circumstances: in cases of emergency (paragraph (a)); where certain specimens (apart from live domestic fowl) are introduced to the Antarctic for food only (paragraph (b)); where certain actions are carried out in accordance with a permit or an authority of another Contracting Party (paragraph (c)); or, in most cases, where the action was reasonably necessary for the establishment, supply or operation of a station (paragraph (d)). This will be amended by subclause 17(1), which commences 6 months after Royal Assent, by:

- replacing paragraph (a) with a new paragraph providing that the operation of subsections (1) and (2) will be excluded where the action was done in an emergency to save a person from death or serious injury, to secure the safety of a ship or aircraft or the safety of equipment or facilities of high value, or to protect the environment (paragraph 17(1)(e)). This wording reflects the wording used in the Madrid Protocol.
- replacing "domestic fowl" with "bird" in paragraph (b) so that no live non-indigenous bird may be taken to the Antarctic (paragraph 17(1)(f)).
- inserting new paragraph (3)(ba), which will provide that a pesticide may be imported into the Antarctic where it is only to be used for scientific, medical or hygienic purposes (paragraph 17(1)(g)).
- inserting in paragraph 19(3)(c) references to new paragraphs 19(1)(ca) and (cb) so that the operation of those paragraphs, which prohibit the importation of certain substances to the Antarctic, so that a permit may not be issued to allow such activities(paragraph 17(1)(h)).

Subclause 17(2) will make amendments to section 19, which is an offence provision, in respect of dogs. These amendments will:

- introduce new paragraph (caa) to subsection 19(1), making it an offence to keep a dog or, if an owner of a dog, to allow it to remain in the Antarctic (paragraph 17(2)(a)).
- omit paragraph (2)(f) which makes it an offence to cause or permit a dog to run free (paragraph (b)). This paragraph will no longer be necessary since it will be an offence to introduce or keep a dog in the Antarctic.
- insert a reference to new paragraph (caa) in paragraph 19(3)(c), so that this action may not be authorised by permit (paragraph (c)).
- by paragraph 17(2)(d) omit the current reference to paragraph (2)(f) in paragraph 19(3)(c), to reflect its omission from subsection 19(2).

The amendments made by subclause 17(2) will commence on 1 April 1994, from which date the Protocol prohibits the presence of dogs in the Antarctic.

Subclause 17(3) will amend paragraph 19(3)(c) to reflect the new definition 'recognised foreign authority'. This amendment commences when the Protocol enters into force.

Subclause 17(4) will amend section 19 of the Principal Act to reflect the new protected areas regime as provided for by Annex V. This subclause will not commence until Annex V becomes effective, thus the present regime will be retained until then. New paragraphs will be substituted for paragraphs (1)(d) to (g) by paragraph (a) of subclause 17(4). It will be an offence (subject to the exceptions as provided for in subsection 19(3) of the Principal Act) to:

- enter, or carry on an activity, in an Antarctic specially protected area without a permit (new paragraph 19(1)(d)).
- carry on an activity in an Antarctic specially managed area, unless in accordance with the plan of management for that area (new paragraph 19(1)(e)).
- cause damage to or in an historic site, or damage, remove or destroy an historic monument (new paragraphs 19(1)(f) and (g)).

Paragraph (b) of subclause 17(4) will insert a reference to new paragraph (f) in paragraph 19(3)(c) of the Principal Act, so that paragraph references in paragraph 19(3)(c) will then provide that:

- no offence is committed in respect of new paragraph (d) if a permit has been issued to authorise the entry to or activities in an Antarctic specially protected area.
- an offence will be committed if a person carries on any activity in an Antarctic specially managed area otherwise than as authorised by the management plan for the area (paragraph (e)). Entry to, and activities within, such areas will not be restricted by permit except insofar as they contain Antarctic specially protected areas.
- a permit may not be issued to allow damage to, or in, an historic site (paragraph (f)).
- a permit may not be issued to allow a person to damage, remove or destroy an historic monument (paragraph (g)).

It is not necessary to include as an offence in the case of Antarctic specially protected areas that a person has carried out an activity contrary to the management plan for the area because entry to, and activities in, such areas are regulated by permit and the Minister may not issue a permit authorising an activity contrary to the management plan. Therefore, if any activities carried out in an Antarctic specially protected area have not been authorised by permit, which will have been formulated in accordance with the management plan, an offence has been committed.



### Clause 18 - Insertion of section 19A, etc

As previously stated, provisions of the *Antarctic Mining Prohibition Act 1991* will be incorporated into the *Antarctic Treaty (Environment Protection) Act 1980*. Clause 18 commences when the Madrid Protocol enters into force.

New section 19A is in effect section 6 of the *Antarctic Mining Prohibition Act* (but see below) and provides that persons are prohibited from engaging in a mining activity (as defined in clause 6) in the Australian Antarctic Territory. By virtue of paragraph 22(1)(a) of the *Acts Interpretation Act 1901* a person includes a body politic or corporate as well as an individual. Whilst there are certain persons who are exempted from the operation of the laws in the Australian Antarctic Territory by virtue of Article VIII.1 of the *Antarctic Treaty* (designated observers or scientific personnel exchanged under the provisions of the *Antarctic Treaty*) their activities cannot legitimately extend to mining. Under Article VIII.1 such persons are outside Australia's jurisdiction for the purpose of exercising their Treaty functions. Any mining activity that was not scientific research in accordance with the Treaty would thus bring them within the operation of this legislation. The new provision differs somewhat from the previous one in that the part of the continental shelf of Heard Island and McDonald Islands which extends south of 60° south latitude is now included in the prohibition.

The maximum penalty for contravention of this provision is \$100,000. In the case of a body corporate this amount would be \$500,000 due to the operation of the *Crimes Act 1914*. By this clause it is proposed that the offence be indictable but provision is made for it to be dealt with summarily, as noted in proposed new subsection 19C(2) below.

New section 19B is inserted. By this clause and the interaction with the previous provision, an Australian national, which by virtue of the definition in clause 6 includes a body corporate either incorporated in Australia or mainly carrying out its activities in Australia, is prohibited from mining in the Antarctic. "Antarctic" is defined in the Principal Act to mean the area south of 60° south latitude and accordingly this prohibits Australians from mining on land, the continental shelf or the high seas.

The maximum penalty for contravention of this provision is \$100,000. By this clause it is proposed that the offence be indictable but provision is made for it to be dealt with summarily, as noted in new subsection 19C(2) below.

It is proposed by new subsection 19C(1) that an offence against section 19A or 19B be indictable. This will allow for operation of the *Proceeds of Crimes Act 1987*. However, by new subsection 19C(2), provision will be made for proceedings in respect of offences against proposed sections 19A and 19B to be heard and determined in a court of summary jurisdiction if it is proper to do so and both the defendant and prosecutor consent to this. If the person is convicted by a court of summary jurisdiction, as provided for in subsection 2, the maximum penalty that may be imposed is \$10,000 if the person is an individual and \$50,000 if the defendant is a body corporate (subsection 3).

### **Clause 19 - Furnishing information**

Subclause 19 (1) proposes to amend section 21 of the Principal Act in order to reflect that a person is not required to incriminate himself or herself. The provision as it stands requires a person to give notice to the Minister of certain activities which have been undertaken, regardless of whether they had a permit or not. It is proposed to amend this so that the information will only have to be furnished where the activity has been undertaken in accordance with a permit or the authority of another Contracting Party thus avoiding the problem outlined above. The amendments to be made by this clause will also include references to information to be provided in respect of protected areas. This subclause commences 6 months after Royal Assent.

Subclause 19(2) will amend section 21 of the Principal Act, as amended by subclause 19(1), to reflect Annex V after it becomes effective.

### **Clause 20 - Insertion of new section 21A**

Clause 20 proposes to insert new section 21A which will provide for offences relating to Part 3, Environmental Impact Assessment.

New subsection 21A(1) will define 'activity' to mean those activities which are covered by new Part 3, that is, the environmental impact assessment procedures.

New subsection 21A(2) will create an offence of knowingly or recklessly carrying on an activity in the Antarctic for which an authorisation is required within the meaning of Part 3 without the required authorisation. An offence will be punishable on conviction by a fine not exceeding \$100,000.

New subsection 21A(3) provides that an offence is committed where the Minister has authorised the carrying out in the Antarctic of an activity subject to a condition being complied with and a person has knowingly or recklessly carried out the activity without complying with the condition, and that the offence is punishable on conviction by a fine not exceeding \$100,000.

It is proposed by new paragraph 21A(4)(a) to create as a defence for prosecution under subsection (1) or (2) that the activity was carried out in an emergency to save a person from death or serious injury, to secure the safety of a ship or aircraft or the safety of equipment or facilities of high value, or to protect the environment. New paragraph 21A(4)(b) will provide a defence where a person was authorised to carry out the activity. This provides a defence for persons who have authorisations from other Parties to the Madrid Protocol.

Subclauses (6) and (7) provide for the offence to be indictable but that it may be heard and determined in a court of summary jurisdiction. This is in similar terms to that of new section 19C (see notes on clause 18).

### **Clause 21 - Repeal of section**

Clause 21 proposes to repeal section 24, which currently provides that offences may be prosecuted summarily or by indictment. Sections 4G, 4H and 4J of the *Crimes Act 1914* now provides for such matters.

### **Clause 22 - Insertion of heading**

Before section 25 the heading "Part 7 - Miscellaneous" will be inserted, for drafting reasons.

### **Clause 23 - Delegation**

By clause 23, the delegation section of the Act will be repealed and replaced with a new section 27 to allow for delegation of the Minister's functions and powers to an officer of, or person employed in, the Department. The exception to this will be certain powers and functions in relation to comprehensive environmental evaluations under Part 3 and these will not be able to be delegated.

### **Clause 24 - Review of decisions**

Clause 24 amends section 28 of the Principal Act so that decisions which have been made under the new provisions relating to environmental impact assessment, that is, new sections 12E, 12H, subsection 12L(4), section 12N and 12P will be able to be reviewed by the Administrative Appeals Tribunal.

### **Clause 25 - Regulations**

Section 29 empowers the Governor-General to make regulations on a range of matters necessary or convenient to give effect to the provisions of the Principal Act, the Agreed Measures and the Convention for the Conservation of Antarctic Seals (the Seals Convention). Clause 25 will amend the section to provide for some additional matters as well as deleting references to the Agreed Measures.

Paragraph (1)(a) proposes to add a new paragraph to subsection 29(1) allowing the making of regulations to provide procedures for dealing with a comprehensive environmental evaluation received from a party to the Madrid Protocol in relation to an activity proposed to be carried out by the party in the Antarctic, or providing for the management and disposal of waste in the Antarctic, or the removal of waste from the Antarctic.

Paragraph (1)(b) will provide for regulations to be made in respect to the setting of fees for processing applications for permits and environmental impact assessment as well as the granting of permits and authorisations.

Subsection 2 will delete references to Agreed Measures (paragraph (a)) and provide for the new protected area regime once Annex V becomes effective (paragraph (b)).

### **Clause 26 - Heading to schedule**

The Schedule at the end of the Act now consists only of the text of the Convention for the Conservation of Antarctic Seals, which is now the subject of regulations under the Act. Further schedules are required to be added, so clause 26 proposes to change the heading to "Schedule 1".

### **Clause 27 - Further amendments**

The Principal Act will be further amended as provided for in Schedule 1.

**Clause 28 - Addition of schedules**

Clause 28 will insert new Schedule 2 which relates to amendments to the Seals Convention in 1988. New Schedule 3 will be the text of the Madrid Protocol, apart from Annex IV which has been implemented by amendments to the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*.

**PART 3 - AMENDMENT OF THE ANTARCTIC MARINE LIVING RESOURCES  
CONSERVATION ACT 1981**

**Clause 29 - Principal Act**

The Act to be amended in this Part is the *Antarctic Marine Living Resources Conservation Act 1981*. As provided for in subclause 2(1) this Part will commence on Royal Assent.

**Clause 30 - Arrest without warrant**

Clause 30 will amend section 15 of the Principal Act by adding new subsection (4) which will provide that nothing in the section prevents the arrest of a person under any other law. The amendment is required to allow other laws in relation to arrest to apply to the *Antarctic Marine Living Resources Conservation Act 1981*. The amendment will make the arrest without warrant provisions of the Act consistent with those of the *Antarctic Treaty Environment Protection Act 1980*.

**PART 4 - REPEAL OF ANTARCTIC MINING PROHIBITION ACT 1991**

**Clause 31 - Repeal of Act**

Clause 31 proposes to repeal the *Antarctic Mining Prohibition Act 1991*. It is proposed to incorporate the provisions of the Act into the *Antarctic Treaty (Environment Protection) Act 1980*, as outlined, once the Madrid Protocol enters into force.

**SCHEDULE 1**

This Schedule makes some technical amendments to the Act after the Madrid Protocol enters into force. Subsections 7(1), 17(8) and 21(1) are amended to take into account a new definition and subsection 12(1) is amended to reflect that the Agreed Measures are to be replaced with the Madrid Protocol.

Section 8 is amended by omitting subsections (7) and (8), which currently provide for the designation of specially protected species. This amendment will not commence until the Madrid Protocol comes into force, and the new provisions providing for specially protected species will also take effect then (see notes on clause 9).

**SCHEDULE 2**

Schedule 2 sets out the new Schedule in relation to the Seals Convention which is to be added to the Principal Act.

The current Schedule, "Convention for the Conservation of Antarctic Seals" will be numbered as Schedule 1.

New Schedule 2 will be a copy of the English text of relevant paragraphs of the 'Report of the 1988 Meeting of the Representatives of the Contracting Parties to the Seals Convention'. These paragraphs amend the Annex to the Convention for the Conservation of Antarctic Seals, a copy of which is at the Schedule now to be known as Schedule 1. The effect of these amendments is to alter the date from when a year shall run and the date by which information in relation to seals killed or captured shall be provided to other Contracting Parties. There is also an addition to the Annex to provide for cooperation and exchange of information with Contracting Parties to other agreements within the Antarctic Treaty System, for example a Party to the Convention on the Conservation of Antarctic Marine Living Resources. Finally, protection during the breeding season has been extended to Weddell seal pups which are less than one year old. Previously, protection had only been afforded to those Weddell seals one year old or older.

New Schedule 3 will be a copy of the Protocol on Environmental Protection to the Antarctic Treaty (the Madrid Protocol), including Annexes I, II, III and V. Annex IV, Prevention of Marine Pollution, has been included as a schedule to the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*, this being the Act that has implemented obligations arising from this Annex.





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