

**Reprint
as at 4 October 2013**



**Antarctica (Environmental
Protection: Liability Annex)
Amendment Act 2012**

Public Act 2012 No 95
Date of assent 11 December 2012
Commencement see section 2

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this reprint.

Note 4 at the end of this reprint provides a list of the amendments incorporated.

This Act is administered by the Ministry of Foreign Affairs and Trade.

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Antarctica (Environmental Protection: Liability Annex) Amendment Act 2012.

2 Commencement

This Act comes into force on a date appointed by the Governor-General by Order in Council.

3 Principal Act amended

This Act amends the Antarctica (Environmental Protection) Act 1994.

4 Consent of Attorney-General required for certain proceedings

- (1) Section 6(1) is amended by inserting “but subject to subsection (3),” after “any other enactment.”
- (2) Section 6 is amended by adding the following subsection:
 - “(3) Subsection (1) does not apply to proceedings under sections 37E and 37F.”

5 New Part 5A inserted

- (1) The following Part is inserted after section 37:

“Part 5A

“Liability for environmental emergencies

“Preliminary provisions

“37A Purpose of Part

The purpose of this Part is to implement New Zealand’s obligations under Annex VI to the Protocol on Environmental Protection to the Antarctic Treaty (commonly known as the Liability Annex), which concerns liability for environmental emergencies occurring in Antarctica.

“37B Interpretation for this Part

In this Part, unless the context otherwise requires,—

“**Annex VI** means Annex VI to the Protocol, entitled Liability Arising from Environmental Emergencies

“**Annex Party** means a contracting party for which Annex VI is in effect

“**environmental emergency** means an accidental event that—

“(a) results in, or imminently threatens to result in, a significant and harmful impact on the Antarctic environment; and

“(b) occurs after this Part comes into force

“**Environmental Protection Fund** means the fund referred to in Article 12 of Annex VI

“**Ministry** means the Ministry of Foreign Affairs and Trade

“**New Zealand operator** means an operator who organises, in New Zealand, an expedition to Antarctica where one of the following applies:

“(a) the operator is a New Zealand resident operator; or

“(b) the expedition proceeds from New Zealand as its final point of departure for Antarctica; or

“(c) the expedition uses a New Zealand ship or aircraft

“**New Zealand resident operator** means an operator that is a New Zealand citizen or is ordinarily resident in New Zealand (within the meaning of section 7(2))

“**operator** means a person who organises an expedition to Antarctica, but does not include either of the following:

- “(a) in the case of a State operator (as identified by an Annex Party), a contractor or subcontractor (other than a natural person) acting on behalf of the State operator:
- “(b) in any other case, an employee, contractor, subcontractor, agent, or other person in the service of the person organising the expedition

“**preventative measures** means reasonable measures designed to reduce the risk of environmental emergencies and their potential adverse impact, and may include any of the following:

- “(a) the use of specialised structures or equipment incorporated into the design and construction of facilities and means of transportation:
- “(b) specialised procedures incorporated into the operation or maintenance of facilities and means of transportation:
- “(c) specialised training of personnel

“**prompt and effective response action** means response action that—

- “(a) is taken promptly after an environmental emergency arises; and
- “(b) is as effective as the person who takes, or could take, the response action is reasonably capable of achieving in the circumstances

“**reasonable measures**, in relation to preventative measures and response action, means measures or actions that are appropriate, practicable, proportionate, and based on objective criteria and information, including information about—

- “(a) the risks to the Antarctic environment and the rate of natural recovery; and
- “(b) the risks to human life and safety; and
- “(c) technological and economic feasibility

“**response action**, in relation to an environmental emergency, means—

- “(a) determining the extent of the emergency and its impact; and

“(b) taking reasonable measures (including, where appropriate, clean-up) to avoid, minimise, or contain the impact of the environmental emergency.

“Compare: Annex VI Articles 2, 3(2)

“Responding to environmental emergencies

“37C New Zealand operators to give notice of environmental emergencies

“(1) A New Zealand operator whose activities give rise to an environmental emergency, or who discovers an environmental emergency, must immediately notify the Ministry of the emergency.

“(2) A New Zealand operator who, knowing that the operator’s activities have given rise to an environmental emergency, fails to comply with subsection (1) commits an offence and is liable on conviction to imprisonment for a term not exceeding 12 months, a fine not exceeding \$100,000, or both.

“(3) For the purposes of this section,—

“(a) the cause of the environmental emergency is irrelevant to the obligation in subsection (1); and

“(b) a New Zealand operator is deemed to know that the operator’s activities have given rise to an environmental emergency if a reasonable person in the circumstances of the operator who was exercising reasonable care would have known of the environmental emergency.

“Compare: Annex VI Article 4(3)

“37D New Zealand operators to take response action

“(1) A New Zealand operator whose activities give rise to an environmental emergency must take prompt and effective response action.

“(2) A New Zealand operator who, knowing that, or being reckless as to whether, the operator’s activities have given rise to an environmental emergency, fails to take prompt and effective response action commits an offence and is liable on conviction to imprisonment for a term not exceeding 2 years, a fine not exceeding \$200,000, or both.