

## **Antarctica (Environmental Protection) Act 1994 119**

An Act to provide for the comprehensive protection of the Antarctic environment and to recognise Antarctica as a natural reserve devoted to peace and science and to implement the Protocol on Environmental Protection to the Antarctic Treaty

**BE IT ENACTED** by the Parliament of New Zealand as follows:

1. Short Title and commencement---(1) This Act may be cited as the Antarctica (Environmental Protection) Act 1994.

(2) Except as provided in subsection (3) of this section, this Act shall come into force on the 1st day of February 1995.

(3) Section 12, Parts III to V and sections 56 and 57 of, and the First Schedule to, this Act shall come into force on a date or dates to be appointed by the Governor-General by Order in Council.

### **PART I**

#### **PRELIMINARY**

2. Application---Except as otherwise provided in this Act, this Act shall apply---

- (a) To any person in the Ross Dependency;
- (b) To any New Zealand citizen and to any person ordinarily resident in New Zealand;
- (c) To any person who is for the time being a member of, or responsible for organising, any expedition to Antarctica which is organised in New Zealand or which proceeds from New Zealand as its final point of departure for Antarctica;
- (d) In respect of any act or omission occurring on board any ship or aircraft, to any person on board any ship or aircraft that is---
  - (i) A New Zealand ship or a New Zealand aircraft; or
  - (ii) Any other ship, whether registered or not and of whatever nationality, which proceeds from New Zealand as its final point of departure for Antarctica.

3. Exception in respect of members of official expeditions of other Contracting Parties---Notwithstanding section 2 of this Act, this Act (except as provided in section 13) shall not apply to any person---

- (a) Who is for the time being a member of, or responsible for organising, an official expedition of another Contracting Party; and
- (b) Who is not a New Zealand citizen or a person ordinarily resident in New Zealand.

4. Exception in respect of ships or aircraft supporting official expeditions of other Contracting Parties---Notwithstanding section 2 of this Act, this Act (except as provided in section 13) shall not apply in respect of any act or omission of a person that occurs on board any ship

or aircraft that is for the time being operating, whether exclusively or not, in support of any official expedition of another Contracting Party unless the person is---

- (a) A New Zealand citizen; or
- (b) A person who is ordinarily resident in New Zealand; or
- (c) A person who is for the time being a member of an official New Zealand expedition.

5. Exception in respect of observers and exchanged scientists of other Contracting Parties---Notwithstanding section 2 of this Act, this Act shall not apply to any person who is a national of another Contracting Party and who is an observer or exchanged scientist, or a member of the staff accompanying any observer or exchanged scientist, while that person is in any part of Antarctica for the purpose of exercising his or her functions, unless the immunity of any such person is waived by the Contracting Party of which the person is a national.

Cf. 1960, No. 47, s. 5

6. Consent of Attorney-General required for certain proceedings---(1) Notwithstanding anything in any other enactment, proceedings---

- (a) In respect of any contravention of this Act by a person who is not a New Zealand citizen or a person ordinarily resident in New Zealand; or
- (b) In respect of any contravention of this Act anywhere in Antarctica outside the Ross Dependency; or
- (c) In respect of any contravention of this Act on board any ship or aircraft that is not a New Zealand ship or a New Zealand aircraft,---

shall not, by virtue only of the provisions of this Act, be instituted in any Court except with the consent of the Attorney-General and on his or her certificate that it is expedient that the proceedings should be instituted.

(2) Notwithstanding subsection (1) of this section, a person may be arrested, or a warrant for a person's arrest may be issued and executed, and the person may be remanded in custody or on bail, but no further or other proceedings shall be taken until the Attorney-General's consent has been obtained.

Cf. 1960, No. 47, s. 3 (3)

7. Interpretation---(1) In this Act, unless the context otherwise requires,---

``Activity" includes---

- (a) Any programme of activities:
- (b) Any change to an existing activity, including---
  - (i) An increase or decrease in the intensity of an existing activity:
  - (ii) The addition of a further activity to an existing activity:
  - (iii) The decommissioning of a facility:

``Annex" means an Annex to the Protocol:

``Another Contracting Party" means a Contracting Party to the

- Antarctic Treaty other than New Zealand:
- “Antarctica” means the area south of 60 degrees south latitude, including all ice shelves in that area:
  - “Antarctic environment” includes---
    - (a) The dependent and associated ecosystems of Antarctica and their constituent parts; and
    - (b) The natural and physical resources of Antarctica; and
    - (c) The intrinsic value of Antarctica, including its wilderness and aesthetic values and its value as an area for the conduct of scientific research, in particular research essential to understanding the global environment:
  - “Antarctic Treaty” means the Antarctic Treaty signed at Washington on the 1st day of December 1959, a copy of the English text of which is set out in the First Schedule to the Antarctica Act 1960:
  - “Committee on Environmental Protection” means the Committee established in accordance with Article 11 of the Protocol:
  - “Consultative Meeting” means a meeting of the Consultative Parties held in accordance with Article IX of the Antarctic Treaty:
  - “Consultative Parties” means the Contracting Parties to the Antarctic Treaty which are recognised as having the right to appoint representatives to Consultative Meetings:
  - “Continental shelf” means the seabed and subsoil of those submarine areas that extend throughout the natural prolongation of land to the outer edge of the continental margin, as determined in accordance with international law, or to a distance of 200 nautical miles where the outer edge of the continental margin does not extend to that distance:
  - “Contracting Party” means a Contracting Party to the Antarctic Treaty:
  - “Exchanged scientist” means any person who is exchanged pursuant to subparagraph (b) of paragraph 1 of Article III of the Antarctic Treaty (which relates to the exchange of scientific personnel between expeditions and stations in Antarctica):
  - “Inspector” means a general inspector or a special inspector appointed under section 39 of this Act:
  - “Minister” means the Minister of Foreign Affairs and Trade:
  - “New Zealand aircraft” means any aircraft that is registered or required to be registered in New Zealand under the Civil Aviation Act 1990; and includes any aircraft for the time being used as an aircraft of the New Zealand Defence Force:
  - “New Zealand corporation” means a body corporate that is incorporated in New Zealand or whose activities are carried on principally in New Zealand:
  - “New Zealand ship” means a ship registered in New Zealand, or recognised by the law of New Zealand as a ship belonging to New Zealand; and includes any ship for the time being used as a ship of the New Zealand Defence Force:
  - “Observer” means an observer designated as such under Article VII (1) of the Antarctic Treaty or under Article 14 (2) of the Protocol:
  - “Official expedition”, in relation to a Contracting Party, means any part of the Antarctic programme of that Party:
  - “Official New Zealand expedition” means any part of the New Zealand Antarctic programme:
  - “Protocol” means the Protocol on Environmental Protection to the

Antarctic Treaty that was opened for signature at Madrid on the 4th day of October 1991, a copy of the English text of which is set out in the Second Schedule to this Act, and includes the Annexes to the Protocol, including any Annex that may be adopted by the Consultative Parties subsequent to the enactment of this Act:

“Ross Dependency” includes all islands and ice shelves within the Dependency, and the continental shelf of the Dependency.

(2) For the purposes of this Act, a person shall be deemed to be ordinarily resident in New Zealand if---

- (a) His or her home is in New Zealand; or
- (b) He or she is residing in New Zealand with the intention of residing in New Zealand indefinitely; or
- (c) Having resided in New Zealand with the intention of establishing his or her home in New Zealand, or with the intention of residing in New Zealand indefinitely, he or she is outside New Zealand but has an intention to return to establish his or her home in New Zealand or to reside in New Zealand indefinitely; or
- (d) The person is a New Zealand corporation or an unincorporated body the majority of whose members are New Zealand citizens or persons ordinarily resident in New Zealand.

(3) Terms and expressions used and not defined in this Act but defined in the Protocol shall, unless the context otherwise requires, have the same meaning as in the Protocol.

Cf. 1960, No. 47, s. 2

## 8. Act to bind the Crown---This Act shall bind the Crown.

9. Purpose and principles---(1) The purpose of this Act is to promote the comprehensive protection of the Antarctic environment and the value of Antarctica as an area for scientific research.

(2) In achieving the purpose of this Act, persons exercising functions under this Act, and persons planning or carrying out activities in Antarctica, shall act in a manner consistent with the environmental principles set out in Article 3 of the Protocol.

10. Ministerial directions---(1) The Minister may direct any person carrying out, or proposing to carry out, any activity in Antarctica---

- (a) To refrain from carrying out an activity in Antarctica if the Minister is not satisfied that the effects of the activity on the Antarctic environment will be consistent with the purpose and principles in section 9 of this Act:
- (b) To abide by such conditions as the Minister considers appropriate in order to avoid or minimise the effects of the activity on the Antarctic environment:
- (c) To establish such procedures as the Minister considers appropriate to monitor, assess, and verify the effect of the activity on the Antarctic environment:
- (d) To provide such reports as the Minister considers appropriate on the effects of the activity on the Antarctic environment and of any changes to the activity, or on procedures established for

monitoring the activity:

- (e) To modify, suspend, or cancel the activity in order to avoid effects on the Antarctic environment which are inconsistent with the purpose and principles in section 9 of this Act:
- (f) To pay any bond that the Minister considers appropriate in order to ensure that the activity is carried out in accordance with an environmental evaluation or with any directions made by the Minister under this section.

(2) Every person commits an offence who---

- (a) Wilfully fails to comply with a direction given by the Minister under this section; or
- (b) In any document prepared pursuant to any such direction,---
  - (i) Makes a statement that is false or misleading in a material particular knowing it to be false or misleading; or
  - (ii) Omits any matter knowing that the omission makes the document false or misleading in a material particular.

(3) Every person who commits an offence against subsection (2) of this section is liable on summary conviction to imprisonment for a term not exceeding one year or to a fine not exceeding \$100,000.

Cf. 1981, No. 53, s. 13

## PART II PROHIBITION OF MINERAL RESOURCE ACTIVITIES

11. Prohibition of mineral resource activities---Every person commits an offence who undertakes any mineral resource activities in any of the following areas:

- (a) The continent of Antarctica (including all its ice shelves):
- (b) The Antarctic islands, that is to say, islands south of 60 degrees south latitude:
- (c) The areas of continental shelf that are adjacent to that continent or those islands.

13. Additional prohibition of mineral resource activities in Ross Dependency---(1) Every person referred to in section 3 or section 4 of this Act to whom this Act would not otherwise apply commits an offence who undertakes any mineral resource activities in the Ross Dependency.

(2) Section 6, and the provisions of this Part and of Part VI of this Act, shall, in so far as they are applicable, apply in respect of an offence against this section.

14. Meaning of "mineral resource activities"---In this Part of this Act, "mineral resource activities"---

- (a) Means "prospecting", "exploration", and "mining" within the meaning of the Crown Minerals Act 1991:
- (b) Includes logistic support activities in connection with mineral resource activities:
- (c) Excludes, notwithstanding paragraphs (a) and (b) of this section, bona fide scientific research undertaken by any official expedition of a Contracting Party and bona fide logistic support

activities associated with any such scientific research.

15. Penalties---Every person who commits an offence against this Part of this Act is liable on conviction on indictment to imprisonment for a term not exceeding 2 years or a fine not exceeding \$200,000, and, if the offence is a continuing one, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence continues.

Cf. 1991, No. 70, s. 101 (1)

### PART III ENVIRONMENTAL IMPACT ASSESSMENT

16. Purpose---The purpose of this Part of this Act is to give effect to Article 8 of and Annex I to the Protocol.

17. Preliminary environmental evaluation---(1) Any person proposing to carry out any activity in Antarctica shall prepare a preliminary environmental evaluation.

(2) The preliminary environmental evaluation shall contain---

- (a) A description of the proposed activity, including its purpose, location, duration, and intensity; and
- (b) A statement as to whether or not the person considers that the activity has less than a minor or transitory effect on the Antarctic environment; and
- (c) A statement as to whether or not another Contracting Party is applying, or has applied, the environmental assessment procedures set out in Annex I of the Protocol to the activity; and
- (d) The name and contact address in New Zealand of the person; and
- (e) The number of persons in the expedition likely to carry out the activity; and
- (f) The date and place of final departure for Antarctica.

(3) The preliminary environmental evaluation shall be sent to the Minister for consideration.

(4) If the Minister determines that the activity is likely to have less than a minor or transitory impact on the Antarctic environment, the Minister shall notify the person that the activity may be carried out.

18. Initial environmental evaluation---(1) Any person proposing to carry out any activity in Antarctica shall prepare an initial environmental evaluation unless---

- (a) The Minister has determined that the activity is likely to have less than a minor or transitory effect on the Antarctic environment; or
- (b) The person decides to proceed directly to the preparation of a comprehensive environmental evaluation.

(2) The initial environmental evaluation---

- (a) Shall contain sufficient detail to enable an assessment to be made

- of whether the activity may have more than a minor or transitory effect on the Antarctic environment; and
- (b) Shall include the matters referred to in Article 2 (1) of Annex I to the Protocol; and
  - (c) Shall be sent to the Minister for consideration, together with such fee as may be prescribed.

(3) If the Minister, after such consultation as he or she considers necessary, is satisfied that the initial environmental evaluation indicates that the activity is likely to have no more than a minor or transitory effect on the Antarctic environment, then the Minister shall notify the applicant that the activity may, subject to any directions made pursuant to section 10 of this Act, be carried out.

(4) If the Minister, after such consultation as he or she considers necessary, is satisfied that the initial environmental evaluation or other evidence indicates that the activity is likely to have more than a minor or transitory effect on the Antarctic environment, the Minister shall notify the applicant that a draft comprehensive environmental evaluation of the effects of the activity is required to be prepared in accordance with section 19 of this Act.

19. Draft comprehensive environmental evaluation---(1) Any person proposing to carry out any activity in Antarctica shall prepare a draft comprehensive environmental evaluation---

- (a) If required to do so by the Minister under section 18 (4) of this Act; or
- (b) If the activity is likely to have more than a minor or transitory effect on the Antarctic environment and no initial environmental evaluation has been prepared.

(2) The draft comprehensive environmental evaluation---

- (a) Shall include the matters referred to in Article 3 (2) of Annex I to the Protocol; and
- (b) Shall be sent to the Minister for consideration, together with such fee as may be prescribed.

(3) The Minister shall---

- (a) Circulate a copy of the draft comprehensive environmental evaluation to all Parties to the Protocol and to the Committee on Environmental Protection for consideration; and
- (b) Publicly notify the draft comprehensive environmental evaluation by publishing a notice in a daily newspaper in each of the cities of Auckland, Wellington, Christchurch, and Dunedin stating---
  - (i) Where the draft comprehensive environmental evaluation may be inspected; and
  - (ii) That any person may make comments on that draft; and
  - (iii) The closing date for comments, which shall be at least 90 days after public notification; and
- (iv) The address to which any comments should be sent.

20. Final comprehensive environmental evaluation---(1) Any person who has prepared a draft comprehensive environmental evaluation may be required by the Minister, by notice in writing, to prepare a final comprehensive environmental evaluation---

- (a) Once that draft evaluation has been considered by the Consultative Meeting, on the advice of the Committee on Environmental Protection; or
- (b) If the Minister is of the view that the Consultative Meeting is unreasonably delaying its consideration of that draft.

(2) The final comprehensive environmental evaluation---

- (a) Shall address and include or summarise any comments made by the Committee on Environmental Protection and the Consultative Meeting, by the Minister, and by other persons who made comments on the draft comprehensive environmental evaluation; and
- (b) Shall be sent to the Minister for consideration.

(3) The Minister shall, after considering the final environmental evaluation, notify the applicant---

- (a) Whether or not the activity may be carried out; and
- (b) Of any directions made by the Minister pursuant to section 10 of this Act.

21. Joint environmental evaluation---A joint evaluation may be made under this Part of this Act by the organiser of an expedition or by any other person on behalf of all or some of the members of the expedition who may carry out an activity.

22. Supply of further information---The Minister may, if he or she considers it desirable to do so for the purpose of ensuring compliance with this Act, require any person who submits any document under this Part of this Act to supply the Minister with---

- (a) A list of the names and addresses of every proposed member of the expedition; or
- (b) Such other information as the Minister may reasonably require

23. Exemptions from this Part---(1) The Minister may, in his or her discretion, exempt any person from the requirements of this Part of this Act if satisfied that another Contracting Party is applying, or has applied, or will apply, the environmental assessment procedures set out in Annex I of the Protocol to the activity.

(2) No person exempted under subsection (1) of this section shall be liable for any offence under this Part of this Act other than an offence under section 24 (1) (e).

24. Offences---(1) Every person commits an offence who,---

- (a) Being the organiser of an expedition to Antarctica, fails, without reasonable excuse, to ensure that the provisions of this Part of this Act in respect of environmental evaluations have been complied with; or
- (b) Without reasonable excuse carries out any activity in Antarctica before the Minister has given notification that the activity may



- be carried out; or
- (c) In the case of an activity that is the subject of an environmental evaluation approved under this Part of this Act, without reasonable excuse carries out the activity in Antarctica otherwise than in accordance with the evaluation; or
- (d) Being the organiser of an expedition to Antarctica, fails, without reasonable excuse, to inform any member of the expedition who is proposing to carry out an activity that is the subject of an environmental evaluation approved under this Part of this Act of the manner in which that activity should be carried out in order to be in accordance with the evaluation; or
- (e) In any document prepared pursuant to this Part of this Act---
  - (i) Makes a statement that is false or misleading in a material particular knowing it to be false or misleading; or
  - (ii) Omits any matter knowing that the omission makes the document false or misleading in a material particular; or
- (f) Without reasonable excuse fails to supply any information required to be supplied under section 22 of this Act.

(2) Subsection (1) (a) and subsection (1) (d) of this section apply only to a person---

- (a) Who is responsible for organising any expedition to Antarctica which is organised in New Zealand or which proceeds from New Zealand as its final point of departure for Antarctica; or
- (b) Who is a New Zealand citizen or a person ordinarily resident in New Zealand.

(3) Every person who commits an offence against subsection (1) of this section is liable on summary conviction to imprisonment for a term not exceeding one year or to a fine not exceeding \$100,000.

#### PART IV MEASURES FOR CONSERVATION OF ANTARCTIC FAUNA AND FLORA AND PROTECTED AREAS

25. Purpose---The purpose of this Part of this Act is to give effect to Annexes II and V to the Protocol.

26. Interpretation---In this Part of this Act, unless the context otherwise requires,---

- ``Antarctic Specially Managed Area" means any area which the Consultative Parties have designated as an Antarctic Specially Managed Area:
- ``Antarctic Specially Protected Area" means any area which the Consultative Parties have designated as an Antarctic Specially Protected Area:
- ``Convention for the Conservation of Antarctic Seals" means the Convention done at London on the 1st day of June 1972:
- ``Convention on the Conservation of Antarctic Marine Living Resources" means the Convention that was opened for signature at Canberra on the 1st day of August 1980, a copy of the English text of which is set out in the First Schedule to the Antarctic

Marine Living Resources Act 1981:

“Harmfully interfere” has a meaning corresponding to the meaning of “harmful interference” in Article 1 of Annex II to the Protocol:

“Historic Site” and “Historic Monument” means any Historic Site or Historic Monument, as the case may be, approved by the Consultative Parties for listing as an Historic Site or Historic Monument:

“Management plan” means a management plan approved by the Consultative Parties in respect of an Antarctic Specially Protected Area or an Antarctic Specially Managed Area:

“Permit” means a formal permission in writing issued by the Minister.

27. Respect for protected areas---(1) Every person carrying out activities in any Antarctic Specially Protected Area or any Antarctic Specially Managed Area shall act in accordance with the requirements of any management plan applying to any such Area.

(2) Every person in Antarctica shall refrain from damaging, removing, or destroying any Historic Site or Historic Monument or its contents.

(3) Notwithstanding subsection (2) of this section, any part of, or the contents of, any Historic Site or Historic Monument may be removed,---

- (a) In accordance with the written authorisation of the Minister, for the purpose of restoration or protection; or
- (b) In an emergency, for the purpose of protection.

(4) Every person commits an offence who does any act in contravention of this section.

28. Acts prohibited except in accordance with permit---(1) No person shall---

- (a) Enter or carry out any activity in an Antarctic Specially Protected Area; or
  - (b) Take or attempt to take any native bird or native mammal in Antarctica; or
  - (c) Remove or damage such quantities of native plants in Antarctica that their local distribution or abundance is significantly affected; or
  - (d) Harmfully interfere with native plants or native mammals or native birds or native invertebrates; or
  - (e) Introduce onto land or ice shelves or into water in Antarctica any species of animal, plant, or micro-organism not native to that area; or
  - (f) Import any non-sterile soil into Antarctica,---
- except in accordance with a permit issued under this Part of this Act.

(2) Subsection (1) (e) of this section shall not prevent any person introducing food into Antarctica to the extent permitted by, and that is in accordance with the requirements of, the Protocol.

(3) No person shall import into Antarctica any dressed poultry knowing

that an inspection in accordance with the Protocol revealed evidence of any disease referred to in Appendix C to Annex II to the Protocol.

(4) Every person commits an offence who does any act in contravention of this section.

29. Application for permits---(1) Every person who wishes to obtain a permit to do any act referred to in section 28 (1) of this Act shall make application in writing to the Minister.

(2) Every application shall be accompanied by such fee as may be prescribed.

(3) Every application shall specify---

- (a) The full name and address of the applicant; and
- (b) The nature and purpose of the activity to which the application relates; and
- (c) When, where, by whom, and how the activity is to be conducted.

(4) A joint application may be made in respect of all or some of the members of an expedition to Antarctica, and may be issued jointly to all or some of the persons who may at any time be members of that expedition.

(5) Subject to the provisions of this Part of this Act the Minister, in his or her discretion, may issue a permit or refuse to issue a permit, or issue a permit subject to such conditions as he or she thinks fit.

(6) Any permit may be revoked or suspended, and the conditions attached to it amended, at any time by the Minister.

(7) Subject to subsection (4) of this section, no permit shall be transferred to any other person except with the consent in writing of the Minister.

30. Restrictions on permits in respect of Antarctic Specially Protected Areas---A permit to enter and carry out any activity in an Antarctic Specially Protected Area shall be issued---

- (a) Only in accordance with the requirements of any Management Plan relating to that area; and
- (b) Only in accordance with, and subject to the restrictions and conditions set out in, Annex V to the Protocol; and
- (c) Subject to such other conditions as the Minister considers are appropriate and are not inconsistent with the purpose and principles in section 9 of this Act.

31. Restrictions on permits to take native fauna and flora---A permit to do any act referred to in paragraph (b) or paragraph (c) or paragraph (d) of section 28 (1) of this Act shall be issued---

- (a) Only in accordance with, and subject to the restrictions and conditions set out in, Annex II to the Protocol; and
- (b) Subject to such other conditions as the Minister considers are appropriate and are not inconsistent with the purpose and

principles in section 9 of this Act.

32. Restrictions on permits to introduce non-indigenous animals, plants, or micro-organisms into Antarctica---A permit to bring into Antarctica any animal, plant, or micro-organism not native to Antarctica, or to import any non-sterile soil, shall be issued---

- (a) Only in accordance with, and subject to the restrictions and conditions set out in, Article 4 of Annex II to the Protocol and the appendices to that Annex; and
- (b) Subject to such other conditions as the Minister considers are appropriate and are not inconsistent with the purpose and principles in section 9 of this Act.

33. Offences---(1) Every person who commits an offence against this Part of this Act is liable on summary conviction to imprisonment for a term not exceeding 6 months, or a fine not exceeding \$100,000.

(2) Notwithstanding any other provisions of this Part of this Act, any act or omission by any person which occurred---

- (a) In accordance with a permit issued by any Party to the Protocol other than New Zealand; or
- (b) In accordance with a permit issued by a Party to the Convention for the Conservation of Antarctic Seals in accordance with that Convention; or
- (c) In accordance with a permit issued in accordance with the Antarctic Marine Living Resources Act 1981; or
- (d) In accordance with a permit issued by a Party to the Convention on the Conservation of Antarctic Marine Living Resources in accordance with that Convention,---

shall not be an offence against this Part of this Act.

## PART V WASTE DISPOSAL

34. General principles of waste disposal and waste management---All persons carrying out activities in Antarctica shall act in a manner consistent with the waste disposal and waste management principles of Article 1 of Annex III to the Protocol.

35. Waste disposal---Articles 2 to 7 of Annex III to the Protocol shall be part of the law of New Zealand.

36. Disposal of waste, etc., unlawful---(1) It shall be unlawful to dispose of waste in Antarctica otherwise than in accordance with Articles 2 to 7 of Annex III to the Protocol.

(2) It shall be unlawful to otherwise contravene Articles 2 to 7 of Annex III to the Protocol.

(3) It shall be unlawful to dispose of waste in Antarctica by open burning.

37. Offences---(1) Every person commits an offence, and is liable on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding \$100,000, who acts in contravention of section 36 of this Act.

(2) Notwithstanding anything in subsection (1) of this section, no person shall be sentenced to imprisonment for any contravention of section 36 of this Act unless that person acted with intent to cause the contravention or was reckless or negligent as to whether a contravention would result.

## PART VI

### MISCELLANEOUS PROVISIONS

#### Emergencies in Antarctica

38. Emergencies in Antarctica---(1) Any act or omission by any person which occurs in a case of emergency relating---

- (a) To the safety of human life; or
- (b) To the safety of ships or aircraft; or
- (c) To equipment or facilities of high value; or
- (d) To the protection of the Antarctic environment,---

shall not be an offence under section 10 or section 24 or Part IV or Part V of this Act.

(2) Every person who commits any act or omission to which this section applies shall supply the Minister, within 60 days, with a full explanation of the act or omission and the reasons for it.

(3) Every person commits an offence, and is liable on summary conviction to a fine not exceeding \$2,000, who fails to comply with subsection (2) of this section.

#### Inspectors

39. Appointment of inspectors---(1) The Minister may issue a warrant appointing any person as---

- (a) A general inspector to report to him or her whether the provisions of this Act, and any regulations made under this Act, have been complied with:
- (b) A special inspector to enforce the provisions of this Act.

(2) No person shall be appointed as a special inspector unless---

- (a) The person has exercised, in a professional capacity, functions and powers similar to those conferred on special inspectors by this Act; and
- (b) The person is an officer or employee of the State services.

40. Provisions relating to appointment---(1) Any inspector may be appointed to report either on any specific case or on any cases generally.

(2) Any inspector shall be appointed on such terms and conditions as may be approved by the Minister; but, if any person so appointed is a full-time officer or employee of the State services, the person shall not be entitled to any additional remuneration in respect of the appointment.

(3) Every inspector shall be appointed for such term as the Minister thinks fit, and may be reappointed.

(4) Any inspector may at any time have his or her warrant revoked at the discretion of the Minister, or may at any time surrender his or her warrant to the Minister.

(5) Any inspector shall, on the expiration of the term of the appointment, or on removal from office, surrender his or her warrant to the Minister.

(6) No inspector shall, by virtue of appointment as an inspector under this Act, be deemed to be employed in the service of Her Majesty for the purpose of the State Sector Act 1988.

Cf. 1981, No. 53, s. 8 (2)-(5)

41. Inspectors' general power of entry and inspection---(1) Any inspector may at any time enter and inspect any area of Antarctica, and have access to any things, for the purpose of carrying out his or her functions under this Act or any regulations made under this Act.

(2) In this section, and in sections 42 to 46 of this Act,---

``Area" includes all places, facilities, installations, equipment, ships, aircraft, and vehicles:

``Thing" includes any document, plant, or animal.

42. Search and seizure by special inspectors with warrant---(1) Subject to subsection (2) of this section, a District Court Judge, a duly authorised Justice, or a Registrar (not being a member of the Police), who, on application made by a special inspector, is satisfied that there are reasonable grounds for believing that there is on or in any area specified in the application any thing---

(a) In respect of which an offence against this Act has been or may have been committed; or

(b) That is or may be evidence of the commission of an offence against this Act; or

(c) That is intended to be used for the commission of an offence against this Act---

may issue, unconditionally or subject to conditions, a warrant authorising the entry and search of the area, at any time on one occasion within 14 days of the issue of the warrant (or within such further time as may be specified in the warrant), and the seizure of any such thing that may be found on or in the area.

(2) The special inspector applying for a warrant under subsection (1) of this section---

(a) Shall first make reasonable inquiries as to whether any other applications for such a warrant have been made in respect of the

place concerned, and (if so) the following matters:

- (i) The offence or offences alleged in respect of each application;
  - (ii) The results of each application; and
- (b) Shall disclose on the application for the warrant the results of the inquiries.

(3) Every warrant under subsection (1) of this section shall be directed to and exercisable only by a special inspector or a member of the Police.

(4) A person exercising a warrant under subsection (1) of this section may use such force in entering and searching the area specified in it (whether by breaking down a door or otherwise), or in breaking open anything in the area as is reasonable in the circumstances.

43. Search and seizure by special inspectors without warrant---(1) Any special inspector who is satisfied that there are reasonable grounds for believing, in respect of any area,---

- (a) That there are grounds for the issue of a warrant under section 42 of this Act; and
- (b) That it is not practicable for the special inspector to obtain possession of a warrant; and
- (c) That there is a real risk that an offence against this Act may be committed, or evidence of the commission of an offence may be destroyed, before any such warrant could be obtained; and
- (d) That seizure without a warrant is necessary having regard to the gravity of any such offence---

may exercise the powers of search and seizure contained in section 42 of this Act as if a warrant had been obtained.

(2) Every special inspector who seizes any thing without warrant shall, as soon as reasonably practicable, send a written report to the Minister stating the reasons for the seizure without warrant.

44. Obligations of inspectors---Every inspector exercising any power under any of sections 41 to 43 of this Act---

- (a) Shall have with him or her evidence of his or her identity and warrant of appointment as an inspector; and
- (b) Shall produce them to any person appearing to be in charge of the area entered---
  - (i) On entering the area (if such a person is then present); and
  - (ii) At any reasonable time thereafter, if asked to do so by the person; and
- (c) If there is no person appearing to be in charge of the area at any time between the time of entry and the time the inspection or search concerned has been completed, shall, as soon as is practicable after completing the inspection or search, give an occupier or person in charge of the area written notice stating that the area has been entered or searched, and specifying the following matters:
  - (i) The time and date of entry or search:

- (ii) The circumstances and purpose of entry or search:
- (iii) The name of every person entering:
- (iv) The principal contents of the warrant of appointment pursuant to which the person is acting:
- (d) Where the search is pursuant to a search warrant, shall have the search warrant with him or her and produce it if required to do so; and
- (e) Where any thing is seized, shall give an occupier or person in charge of the area a written inventory of all things so seized; and
- (f) Shall report any offence or suspected offence to the Police as soon as practicable.

45. Arrest by special inspectors without warrant---(1) Where a special inspector has reasonable cause to believe---

- (a) That any person is committing or has committed an offence against this Act; and
  - (b) That there is a real risk that the person may not be able to be served with proceedings under this Act, or may not appear to answer any such proceedings; and
  - (c) That arrest without a warrant is necessary having regard to the gravity of any such offence,---
- the special inspector may arrest that person.

(2) Any person called upon to do so by any person referred to in subsection (1) of this section is justified in assisting him or her in good faith to arrest any person.

(3) Every special inspector who arrests any person without warrant shall, as soon as reasonably practicable,---

- (a) Arrange for an information to be laid in respect of the offence; and
- (b) Deliver the arrested person into the custody of a member of the Police; and
- (c) Send a written report to the Minister stating the reasons for the arrest without warrant.

(4) Every special inspector shall release on bail any person arrested under this section.

(5) Every person released on bail shall be released subject to the condition that he or she must attend before such Court at such time as the inspector---

- (a) Specifies at the time of granting bail; or
- (b) Where it is not reasonably practicable to so specify at that time, specifies as soon as possible thereafter.

(6) Sections 49 (2A), 49 (3), 50 (1), 50 (2), 53 (1), 53 (3), and 54 (1) of the Summary Proceedings Act 1957 shall apply to every grant of bail under this section as if every reference to a member of the Police, a Registrar, or a Justice were a reference to a special inspector and with any other necessary modifications.

Cf. 1989, No. 18, s. 36A; 1991, No. 18, s. 14; 1991, No. 100, s. 5

46. Custody of property seized---(1) Any thing seized under this Act



shall be held in the custody of the Crown until---

- (a) A decision is made not to lay any information in respect of the alleged offence for which the thing was seized; or
- (b) Where such an information is laid, the completion of the proceedings in respect of the alleged offence for which the thing was seized, or such other time as the Court may determine,---

and shall then be returned to the person entitled to possession of the thing.

(2) The special inspector shall decide whether or not to arrange for an information to be laid in respect of an alleged offence for which any thing is seized pursuant to this Act as soon as reasonably practicable after the thing is seized.

(3) The person from whom the thing was seized, or the owner or person entitled to possession of the thing seized, may---

- (a) Apply to the Minister (if no decision has been made whether or not to lay an information); or
- (b) Apply to the Court (if an information has been laid)---

for the release of the thing to any such person.

(4) The Minister or the Court, as the case may be, may order release of the thing under bond in such sum and under such sureties and conditions (if any) as may be specified.

Cf. 1991, No. 18, s. 16, 17 (1), 20

47. Offence to obstruct inspectors---Every person commits an offence, and is liable on summary conviction to a fine not exceeding \$1,500, who wilfully obstructs, hinders, resists, or deceives any inspector who is carrying out his or her functions under this Act.

Cf. 1991, No. 69, ss. 338 (3) (a), 339 (3)

48. Observers---The Minister may appoint any person as an observer for the purpose of carrying out inspections in accordance with Article VII of the Antarctic Treaty or Article 14 of the Protocol.

50. Liability for causing inspector to incur expense---Where any person causes an inspector to incur any expense that the inspector would not otherwise have incurred, by failing to comply with or acting in contravention of any provision of this Act or any regulations made under this Act, or by failing to comply with or acting in contravention of any order or direction or requirement or conditions reasonably and properly given or imposed in accordance with this Act or any such regulations, that person shall, upon conviction, reimburse the Crown for the amount of any such expense that is, in the opinion of the convicting Court, reasonably and properly incurred, and that amount shall be recoverable from that person in like manner as a fine.

Cf. 1981, No. 53, s. 15

#### Miscellaneous Provisions

51. Service of documents---(1) Any direction given by the Minister or

any other document to be sent to a person may be---

- (a) Delivered to that person; or
- (b) Posted to that person's address or delivered to a box at a document exchange which that person is using at the time; or
- (c) Sent by facsimile machine to a telephone number used by that person for the transmission of documents by facsimile; or
- (d) Read to the person via any telecommunication or radiocommunication link if the person is in Antarctica; or
- (e) Served in accordance with any directions as to service given by a court.

(2) Any direction or other document given in accordance with paragraph (b) or paragraph (c) of subsection (1) of this section may be sent to---

- (a) The person's address in New Zealand (if the person is in New Zealand); or
- (b) The station in Antarctica at which the person is based; or
- (c) The ship on board which the person is.

(3) Any direction or other document may be sent by any combination of methods described in subsection (1) of this section.

(4) A direction or other document is not deemed to have been served or sent or delivered to a person if the person proves that, through no fault on the person's part, the document was not received within the time specified.

Cf. 1993, No. 105, ss. 391, 392

52. Evidentiary certificates---(1) The Minister may give a certificate stating, at any time specified in the certificate,---

- (a) That an aircraft or ship was, or was not, a New Zealand aircraft or New Zealand ship:
- (b) That an expedition was, or was not, an official New Zealand expedition or an official expedition in relation to another Contracting Party:
- (c) That a ship or aircraft was, or was not, operating, whether exclusively or not, in support of any official expedition of another Contracting Party:
- (d) Any fact relevant to any question whether or not any person is or was an observer or exchanged scientist, or a member of the staff accompanying an observer or exchanged scientist, or whether or not any immunity has been waived under section 5 of this Act.

(2) In any proceedings for an offence against this Act,---

- (a) A certificate given under subsection (1) (a) of this section is prima facie evidence of the matters specified in the certificate:
- (b) A certificate given under subsection (1) (b) or (c) or (d) of this section is conclusive evidence of the matters specified in the certificate.

(3) For the purposes of this section, a document purporting to be a certificate under this section shall, unless the contrary is proved, be

deemed to be such a certificate and to have been duly given.

Cf. 1960, No. 47, s. 6; 1981, No. 53, s. 12; 1993, No. 48, s. 6



53. No derogation from certain enactments---Nothing in this Act shall derogate from the provisions of---

- (a) The Antarctic Marine Living Resources Act 1981:
  - (b) The Marine Mammals Protection Act 1978:
  - (c) The Antarctica Act 1960:
  - (d) The Territorial Sea and Exclusive Economic Zone Act 1977:
  - (e) The Ross Dependency Whaling Regulations 1929, as published in the Gazette on the 31st day of October 1929 at pages 2747 and 2748:
- Cf. 1981, No. 53, s. 16

54. Application of Maritime Transport Act 1994---(1) The Governor-General may from time to time, by Order in Council, declare, for the purpose of implementing or giving better effect to Annex IV of the Protocol, that---

- (a) Any provisions of the Maritime Transport Act 1994; and
  - (b) Any marine protection rules made under that Act,---
- as may be specified shall apply in or extend to Antarctic waters in such manner and with such modifications as may be specified in the Order, and the Order shall have effect accordingly.

(2) Nothing in this section limits---

- (a) The provisions of that Act or those rules that apply in Antarctic waters regardless of whether any Order is made; or
- (b) The power to make marine protection rules under that Act; or
- (c) The application of other provisions of this Act in respect of an offence against the Maritime Transport Act 1994 or marine protection rules made under that Act to which this section applies.

(3) In this section,---

“Antarctic waters” means the territorial sea of New Zealand adjacent to the Ross Dependency and other seas south of 60 degrees south latitude:

“Territorial sea” means the territorial sea of New Zealand as provided for in section 3 of the Territorial Sea and Exclusive Economic Zone Act 1977.

55. Regulations---(1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) Prescribing the manner or content of applications, notices, environmental evaluations, or any other documentation or information as may be required under this Act:
- (b) Prescribing the fees payable or the methods of calculating fees in respect of applications under this Act and the submission of environmental evaluations:
- (c) Prescribing the procedure to be followed under Part III of this

Act:

- (d) Specifying the areas which are, within the meaning of section 26 of this Act, Antarctic Specially Managed Areas or Antarctic Specially Protected Areas:
- (e) Specifying the sites or monuments which are, within the meaning of section 26 of this Act, Historic Sites or Historic Monuments:
- (f) Prescribing any emission standards and equipment guidelines in respect of incinerators:
- (g) Giving effect to any measures adopted in accordance with the Protocol or the Antarctic Treaty for the protection of the Antarctic environment and the value of Antarctica as an area for scientific research:
- (h) Providing for such other matters as are contemplated by or necessary for giving full effect to this Act and for its due administration.

(2) The Governor-General may from time to time, by Order in Council,---

- (a) Amend the Second Schedule to this Act by making such amendments to the text of the Protocol set out in that Schedule as are required to bring that text up to date:
- (b) Revoke the Second Schedule to this Act, and substitute a new Second Schedule setting out in an up-to-date form the text of the Protocol set out in that Schedule.

(3) Any regulations made under subsection (2) of this section shall,---

- (a) If made on or before the 30th day of June in any year, expire on the close of the 31st day of December of that year except so far as they are expressly confirmed by Act of Parliament passed during that year; and
- (b) If made on or after the 1st day of July in any year, expire on the close of the 31st day of December in the following year except so far as they are expressly confirmed by Act of Parliament passed before the end of that following year.

(4) Any regulations made under this section may prescribe offences for contravention of, or non-compliance with, their provisions and penalties, on the summary conviction of any offender, not exceeding in any case a fine of \$5,000.

(5) No Order in Council shall be made under subsection (1) (g) of this section except on the advice of the Minister given after consultation by that Minister with the Minister for the Environment and the Minister of Conservation and such other Ministers and persons as the Minister considers appropriate.

Cf. 1990, No. 98, s. 42C (2); 1992, No. 75, s. 22; 1993, No. 95, s.

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56. Amendments to other Acts---(1) The enactments specified in the First Schedule to this Act are hereby amended in the manner indicated in that Schedule.

(2) The Summary Proceedings Act 1957 is hereby amended by inserting in Part II of the First Schedule, in its appropriate alphabetical order,

the following item:

“The Antarctica           Part II Mineral resource activities in  
(Environ-mental           Antarctica”.  
Protection) Act 1994

57. Repeal and revocations---(1) The Antarctica Amendment Act 1970 is hereby consequentially repealed.

(2) The Antarctic (Fauna and Flora) Regulations 1971 (S.R. 1971/278) and the Antarctic (Fauna and Flora) Regulations 1971, Amendment No. 1 (S.R. 1973/284) are hereby revoked.

(3) The Antarctica (Specially Protected Areas) Order 1971 (S.R. 1971/279) is hereby revoked.

(Schedules omitted)

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