

Antarctica Act 1960 047

Commenced: 21 Oct 1960; 27 Jun 1961, ss. 4, 5, 6; 29 Oct 1970, Antarctica Amendment Act 1970

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R.S. Vol. 6

21

REPRINTED ACT [WITH AMENDMENTS INCORPORATED]

ANTARCTICA

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THE ANTARCTICA ACT 1960

1960, No. 47

An Act to confer jurisdiction on the Courts of New Zealand to deal with crimes committed in the Ross Dependency and certain other parts of Antarctica, and to restrict the jurisdiction of the Courts in respect of acts or omissions in Antarctica of certain nationals of other countries [21 October 1960

1. Short Title and commencement---(1) This Act may be cited as the Antarctica Act 1960.

(2) Sections 4 to 6 of this Act shall come into force on a date to be appointed for the commencement thereof by the Governor-General by Proclamation.

(3) Except as provided in subsection (2) of this section, this Act shall come into force on its passing.

Ss. 4-6 were brought into force on 27 June 1961. See S.R.1961/72.

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

"Antarctica" means the area south of 60 degrees south latitude, including all ice shelves in that area:

"Exchanged scientist" means a person exchanged pursuant to subparagraph (b) of paragraph 1 of Article III of the Treaty (which relates to the exchange of scientific personnel between expeditions and stations in Antarctica):

"New Zealand aircraft" means any aircraft that is registered or required to be registered in New Zealand under [the Civil Aviation Act 1964]; and includes any aircraft for the time being used as an aircraft of any of the armed forces of 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 any of the armed forces of New Zealand:

"Observer" means an observer designated as such under paragraph 1 of Article VII of the Treaty (which relates to the appointment of observers to carry out inspections in Antarctica):

"Treaty" means the Antarctic Treaty, signed at Washington on the 1st day of December 1959, of which a copy is set out in the [First Schedule] to this Act.

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

- (a) His home is in New Zealand; or
- (b) He is residing in New Zealand with the intention of residing therein indefinitely; or
- (c) Having resided in New Zealand with the intention of establishing his home therein, or with the intention of residing in New Zealand indefinitely, he is outside New Zealand but has an intention to return to establish his home therein or to reside in New Zealand indefinitely.

In subs. (1):

"New Zealand aircraft": In the definition of this term the Civil Aviation Act 1964, being the corresponding enactment in force at the date of this reprint, has been substituted for the repealed Civil Aviation Act 1948.

"Treaty". In the definition of this term the words "First Schedule" were substituted for the word "Schedule" by s. 3 (a) of the Antarctica Amendment Act 1970.

3. Crimes committed in the Ross Dependency or in certain other parts of Antarctica---(1) This section applies to any act done or omitted---

- (a) In the Ross Dependency, by any person; or
- (b) In any part of Antarctica, other than the Ross Dependency, that is not within the jurisdiction of any country, by any person who is a New Zealand citizen or a person ordinarily resident in New Zealand.

(2) Subject to the provisions of this Act, where any person does or omits any act to which this section applies, and that act or omission would, if it occurred in New Zealand, be a crime under any enactment,

whether passed before or after the passing of this Act, he commits a crime and is liable to be proceeded against and punished in the same manner in all respects as if the act or omission had occurred in New Zealand; and the Courts of New Zealand shall have jurisdiction accordingly.

(3) Notwithstanding anything in any other enactment, proceedings for the trial and punishment of any person who,---

(a) Not being a New Zealand citizen or a person ordinarily resident in New Zealand, is charged with having committed a crime in the Ross Dependency; or

(b) Being a New Zealand citizen or a person ordinarily resident in New Zealand, is charged with having committed, in the Ross Dependency, a crime on board any ship or aircraft which is not a New Zealand ship or a New Zealand aircraft; or

(c) Being a New Zealand citizen or a person ordinarily resident in New Zealand, is charged with having committed a crime in any other part of Antarctica, otherwise than on board 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 certificate that it is expedient that the proceedings should be instituted:

Provided that a person so charged may be arrested, or a warrant for his arrest may be issued and executed, and he may be remanded in custody or on bail, notwithstanding that the consent of the Attorney-General to the institution of a prosecution for the crime has not been obtained; but no further or other proceedings shall be taken until that consent has been obtained.

4. Crimes committed by certain New Zealand citizens in other parts of Antarctica--(1) This section applies to any act done or omitted in any part of Antarctica, other than the Ross Dependency, that is within the jurisdiction of any country by any New Zealand citizen who is an observer or exchanged scientist or a member of the staff accompanying any observer or exchanged scientist, while he is in that part of Antarctica for the purpose of exercising his functions.

(2) Subject to the provisions of this Act, where any person does or omits any act to which this section applies, and that act or omission would, if it occurred in New Zealand, be a crime under any enactment, whether passed before or after the commencement of this section, he commits a crime and is liable to be proceeded against and punished in the same manner in all respects as if the act or omission had occurred in New Zealand; and the Courts of New Zealand shall have jurisdiction accordingly.

(3) The provisions of subsection (3) of section 3 of this Act, so far as they are applicable, shall apply to proceedings for the trial and punishment of any person in respect of any act or omission to which this section applies.

This section was brought into force on 27 June 1961. See S.R. 1961/72.

5. Restriction of jurisdiction over certain nationals of other countries--(1) Notwithstanding anything in section 3 of this Act or in any other enactment (whether passed before or after the commencement of this section) or in any rule of law, but subject to subsection (1) of section 7 of this Act, the Courts of New Zealand shall not have any jurisdiction, whether civil or criminal, in respect of any act done or omitted by any person who is a national of any Contracting Party to the Treaty, other than New Zealand, and who is an observer or exchanged scientist or a member of the staff accompanying any observer or exchanged scientist, while he is in any part of Antarctica, including the Ross Dependency, for the purpose of exercising his functions.

(2) In respect of any act or omission to which this section applies, the Contracting Party of which the person who did or omitted the act is a national may waive any immunity of that person under this section; and thereupon, to the extent of the waiver, the Courts of New Zealand shall have such jurisdiction as they would have had if subsection (1) of this section had not been passed.

This section was brought into force on 27 June 1961. See S.R. 1961/72.

6. Certificate of Minister of Foreign Affairs to be evidence of certain facts---If in any proceedings there arises any question whether or not any person is or was at any time an observer or exchanged scientist, or a member of the staff accompanying any observer or exchanged scientist, within the meaning of this Act, or whether or not any immunity has been waived under section 5 of this Act, a certificate issued by [the Minister of Foreign Affairs] stating any fact relevant to that question shall be conclusive evidence of that fact.

The reference to the Minister of Foreign Affairs was substituted for a reference to the Minister of External Affairs by s. 2 (3) of the Foreign Affairs Amendment Act 1969.

This section was brought into force on 27 June 1961. See S.R. 1961/72.

[6A. Regulations for conservation of Antarctic fauna and flora---(1) The Governor-General may from time to time, by Order in Council, make regulations for the purpose of giving effect to the agreed measures for the conservation of Antarctic fauna and flora set out in the Second Schedule to this Act (being measures recommended pursuant to Article IX (1) of the Treaty for approval by the Contracting Parties, as heretofore amended) and to any amendment of those agreed measures that may hereafter be made pursuant to the said Article IX or to Article XIV of those agreed measures.

(2) Without limiting the generality of subsection (1) of this section, any regulations made for the purposes of that subsection may prohibit, except as permitted by or under the regulations,---

(a) The wilful killing, injuring, molesting, or taking of any native mammal or native bird, or any attempt at any such act, in any part of Antarctica:

(b) The gathering of any native plant within a specially protected area:

(c) The driving of any vehicle, or the movement of any aircraft on the ground (whether it is being mechanically propelled or not), within a specially protected area:

(d) The bringing into any part of Antarctica of any animal or plant of a species that is not indigenous to Antarctica.

(3) Any regulations made for the purposes of this section may---

(a) Designate as a specially protected species any species of mammal or bird which is for the time being specified in Annex A to the said agreed measures or which has been recommended for inclusion in that annex pursuant to Article IX (1) of the Treaty:

(b) Designate (whether by reference to a map or otherwise) as a specially protected area any area which is for the time being specified in Annex B to the said agreed measures or which has been recommended for inclusion in that annex pursuant to Article IX (1) of the Treaty.

(4) Any regulations under this section may be made to apply---

(a) To any New Zealand citizen or any person ordinarily resident in New Zealand:

(b) To any person who is for the time being the owner or master or a member of the crew of a New Zealand ship or the pilot in command or a member of the crew of a New Zealand aircraft:

(c) Subject to such exceptions and modifications as may be specified in the regulations, to any person who is for the time being a member of any expedition organised in New Zealand:

(d) In the Ross Dependency, to any person who is not a national of any Contracting Party to the Treaty.

(5) Any regulations under this section may be made to extend and apply to the high seas within Antarctica.

(6) Any regulations under this section may---

(a) Provide for the issue of permits, for any of the purposes of the regulations, by any person who is the holder for the time being of any specified office or appointment in New Zealand or Antarctica:

(b) Prescribe, or authorise any such person to prescribe, conditions subject to which such permits may be issued:

(c) Authorise any such person, subject to such conditions and limitations (if any) as may be prescribed in the regulations, to delegate to any other person all or any of his powers under the regulations:

(d) Exempt from any of the provisions of the regulations the holder of any permit issued by any Contracting Party to the Treaty:

(e) Make such other provision as may be contemplated by or necessary to give full effect to the said agreed measures.

(7) Any regulations under this section may prescribe, in respect of the contravention of or non-compliance with any of their provisions, penalties, on the summary conviction of any offender, not exceeding in any case imprisonment for a term of 3 months or a fine of \$500, or both.

(8) If at any time the agreed measures set out in the Second Schedule to this Act are amended pursuant to Article IX (4) of the Treaty or to Article XIV of the said agreed measures, the Governor-General may by Order in Council amend the Second Schedule to this Act for the purpose of giving effect to the amendment.]

This section was inserted by s. 2 of the Antarctica Amendment Act 1970. For regulations under this section, see S.R. 1971/278. For an Order in Council under subs. (8), see S.R. 1971/279.

7. Saving of jurisdiction otherwise than under this Act---(1) Nothing in this Act shall limit, affect, or extend the jurisdiction of any New Zealand Court under any enactment or rule of law in respect of acts done or omitted on the high seas within Antarctica.

(2) Except as provided in subsection (3) of section 3 of this Act, nothing in that section or in section 4 of this Act shall limit or affect the provisions of any enactment or rule of law relating to the liability of persons in respect of acts done or omitted beyond New Zealand.

[SCHEDULES

FIRST SCHEDULE]

Section 2 (1)

THE ANTARCTIC TREATY

[Omitted.]

[SECOND SCHEDULE

AGREED MEASURES FOR THE CONSERVATION OF ANTARCTIC FAUNA AND FLORA

PREAMBLE

The Governments participating in the Third Consultative Meeting under Article IX of the Antarctic Treaty,

Desiring to implement the principles and purposes of the Antarctic Treaty;

Recognising the scientific importance of the study of Antarctic fauna and flora, their adaptation to their rigorous environment, and their interrelationship with that environment;

Considering the unique nature of these fauna and flora, their circumpolar range, and particularly their defencelessness and susceptibility to extermination;

Desiring by further international collaboration within the framework of the Antarctic Treaty to promote and achieve the objectives of protection, scientific study, and rational use of these fauna and flora; and

Having particular regard to the conservation principles developed by the Scientific Committee on Antarctic Research (SCAR) of the International Council of Scientific Unions;

Hereby consider the Treaty Area as a Special Conservation Area and have agreed on the following measures:

ARTICLE I

1. These Agreed Measures shall apply to the same area to which the Antarctic Treaty is applicable (hereinafter referred to as the Treaty Area) namely the area south of 60deg. South Latitude, including all ice shelves.
2. However, nothing in these Agreed Measures shall prejudice or in any way affect the rights, or the exercise of the rights, of any State under international law with regard to the high seas within the Treaty Area, or restrict the implementation of the provisions of the Antarctic Treaty with respect to inspection.
3. The Annexes to these Agreed Measures shall form an integral part thereof, and all references to the Agreed Measures shall be considered to include the Annexes.

ARTICLE II

For the purposes of these Agreed Measures:

(a) "Native mammal" means any member, at any stage of its life cycle, of any species belonging to the Class Mammalia indigenous to the Antarctic or occurring there through natural agencies of dispersal, excepting whales.

(b) "Native bird" means any member, at any stage of its life cycle (including eggs), of any species of the Class Aves indigenous to the Antarctic or occurring there through natural agencies of dispersal.

(c) "Native plant" means any kind of vegetation at any stage of its life cycle (including seeds), indigenous to the Antarctic or occurring there through natural agencies of dispersal.

(d) "Appropriate authority" means any person authorised by a Participating Government to issue permits under these Agreed Measures. The functions of an authorised person will be carried out within the framework of the Antarctic Treaty. They will be carried out exclusively in accordance with scientific principles and will have as their sole purpose the effective protection of Antarctic fauna and flora in accordance with these Agreed Measures.

(e) "Permit" means a formal permission in writing issued by an appropriate authority as defined at paragraph (d) above.

(f) "Participating Government" means any Government for which these Agreed Measures have become effective in accordance with Article XIII of these Agreed Measures.

ARTICLE III

Each Participating Government shall take appropriate action to carry out these Agreed Measures.

ARTICLE IV

The Participating Governments shall prepare and circulate to members of expeditions and stations information to ensure understanding and observance of the provisions of these Agreed Measures, setting forth in particular prohibited activities, and providing lists of specially protected species and specially protected areas.

ARTICLE V

The provisions of these Agreed Measures shall not apply in cases of extreme emergency involving possible loss of human life or involving the safety of ships or aircraft.

ARTICLE VI

1. Each Participating Government shall prohibit within the Treaty Area the killing, wounding, capturing or molesting of any native mammal or native bird, or any attempt at any such act, except in accordance with a permit.
2. Such permits shall be drawn in terms as specific as possible and issued only for the following purposes:
 - (a) to provide indispensable food for men or dogs in the Treaty Area in limited quantities, and in conformity with the purposes and principles of these Agreed Measures;
 - (b) to provide specimens for scientific study or scientific information;
 - (c) to provide specimens for museums, zoological gardens, or other educational or cultural institutions or uses.
3. Permits for Specially Protected Areas shall be issued only in accordance with the provisions of Article VIII.
4. Participating Governments shall limit the issue of such permits so as to ensure as far as possible that:
 - (a) no more native mammals or birds are killed or taken in any year than can normally be replaced by natural reproduction in the following breeding season;
 - (b) the variety of species and the balance of the natural ecological systems existing within the Treaty Area are maintained.

5. The species of native mammals and birds listed in Annex A of these Measures shall be designated "Specially Protected Species", and shall be accorded special protection by Participating Governments.
6. A Participating Government shall not authorise an appropriate authority to issue a permit with respect to a Specially Protected Species except in accordance with paragraph 7 of this Article.
7. A permit may be issued under this Article with respect to a Specially Protected Species, provided that:
- (a) it is issued for a compelling scientific purpose, and
 - (b) the actions permitted thereunder will not jeopardise the existing natural ecological system or the survival of that species.

ARTICLE VII

1. Each Participating Government shall take appropriate measures to minimise harmful interference within the Treaty Area with the normal living conditions of any native mammal or bird, or any attempt at such harmful interference, except as permitted under Article VI.
2. The following acts and activities shall be considered as harmful interference:
- (a) allowing dogs to run free,
 - (b) flying helicopters or other aircraft in a manner which would unnecessarily disturb bird and seal concentrations, or landing close to such concentrations (e.g. within 200 m),
 - (c) driving vehicles unnecessarily close to concentrations of birds and seals (e.g. within 200 m),
 - (d) use of explosives close to concentrations of birds and seals,
 - (e) discharge of firearms close to bird and seal concentrations (e.g. within 300 m),
 - (f) any disturbance of bird and seal colonies during the breeding period by persistent attention from persons on foot.

However, the above activities, with the exception of those mentioned in (a) and (e), may be permitted to the minimum extent necessary for the establishment, supply and operation of stations.

3. Each Participating Government shall take all reasonable steps towards the alleviation of pollution of the waters adjacent to the coast and ice shelves.

ARTICLE VIII

1. The areas of outstanding scientific interest listed in Annex B shall be designated "Specially Protected Areas" and shall be accorded special protection by the Participating Governments in order to preserve their unique natural ecological system.
2. In addition to the prohibitions and measures of protection dealt with in other Articles of these Agreed Measures, the Participating Governments shall in Specially Protected Areas further prohibit:
- (a) the collection of any native plant, except in accordance with a permit;
 - (b) the driving of any vehicle.
3. A permit issued under Article VI shall not have effect within a Specially Protected Area except in accordance with paragraph 4 of the present Article.
4. A permit shall have effect within a Specially Protected Area provided that:
- (a) it was issued for a compelling scientific purpose which cannot be served elsewhere; and
 - (b) the actions permitted thereunder will not jeopardise the natural ecological system existing in that Area.

ARTICLE IX

1. Each Participating Government shall prohibit the bringing into the Treaty Area of any species of animal or plant not indigenous to that Area, except in accordance with a permit.
2. Permits under paragraph 1 of this Article shall be drawn in terms as specific as possible and shall be issued to allow the importation only of the animals and plants listed in Annex C. When any such animal or plant might cause harmful interference with the natural system if left unsupervised within the Treaty Area, such permits shall require that it be kept under controlled conditions and, after it has served its purpose, it shall be removed from the Treaty Area or destroyed.
3. Nothing in paragraphs 1 and 2 of this Article shall apply to the importation of food into the Treaty Area so long as animals and plants used for this purpose are kept under controlled conditions.
4. Each Participating Government undertakes to ensure that all reasonable precautions shall be taken to prevent the accidental introduction of parasites and diseases into the Treaty Area. In particular, the precautions listed in Annex D shall be taken.

ARTICLE X

Each Participating Government undertakes to exert appropriate efforts, consistent with the Charter of the United Nations, to the end that no one engages in any activity in the Treaty Area contrary to the principles or purposes of these Agreed Measures.

ARTICLE XI

Each Participating Government whose expeditions use ships sailing under flags of nationalities other than its own shall, as far as feasible, arrange with the owners of such ships that the crews of these ships observe these Agreed Measures.

ARTICLE XII

1. The Participating Governments may make such arrangements as may be necessary for the discussion of such matters as:
 - (a) the collection and exchange of records (including records of permits) and statistics concerning the numbers of each species of native mammal and bird killed or captured annually in the Treaty Area;
 - (b) the obtaining and exchange of information as to the status of native mammals and birds in the Treaty Area, and the extent to which any species needs protection;
 - (c) the number of native animals or birds which should be permitted to be harvested for food, scientific study, or other uses in the various regions;
 - (d) the establishment of a common form in which this information shall be submitted by Participating Governments in accordance with paragraph 2 of this Article.
2. Each Participating Government shall inform the other Governments in writing before the end of November of each year of the steps taken and information collected in the preceding period of 1st July to 30th June relating to the implementation of these Agreed Measures. Governments exchanging information under paragraph 5 of Article VII of the Antarctic Treaty may at the same time transmit the information relating to the implementation of these Agreed Measures.

ARTICLE XIII

1. After the receipt by the Government designated in Recommendation I-XIV (5) of notification of approval by all Governments whose representatives are entitled to participate in meetings provided for under Article IX of the Antarctic Treaty, these Agreed Measures shall become effective for those Governments.

2. Thereafter any other Contracting Party to the Antarctic Treaty may, in consonance with the purposes of Recommendation III-VII, accept these Agreed Measures by notifying the designated Government of its intention to apply the Agreed Measures and to be bound by them. The Agreed Measures shall become effective with regard to such Governments on the date of receipt of such notification.

3. The designated Government shall inform the Governments referred to in paragraph 1 of this Article of each notification of approval, the effective date of these Agreed Measures and of each notification of acceptance. The designated Government shall also inform any Government which has accepted these Agreed Measures of each subsequent notification of acceptance.

ARTICLE XIV

1. These Agreed Measures may be amended at any time by unanimous agreement of the Governments whose Representatives are entitled to participate in meetings under Article IX of the Antarctic Treaty.

2. The Annexes, in particular, may be amended as necessary through diplomatic channels.

3. An amendment proposed through diplomatic channels shall be submitted in writing to the designated Government which shall communicate it to the Governments referred to in paragraph 1 of the present Article for approval; at the same time, it shall be communicated to the other Participating Governments.

4. Any amendment shall become effective on the date on which notifications of approval have been received by the designated Government and from all of the Governments referred to in paragraph 1 of this Article.

5. The designated Government shall notify those same Governments of the date of receipt of each approval communicated to it and the date on which the amendment will become effective for them.

6. Such amendment shall become effective on that same date for all other Participating Governments, except those which before the expiry of 2 months after that date notify the designated Government that they do not accept it.

ANNEXES TO THESE AGREED MEASURES ANNEX A

Specially protected species

Species recommended for inclusion in this Annex pursuant to Article IX (1) of the Antarctic Treaty

1. All species of the genus *Arctocephalus*, Fur Seals.
2. *Ommatophoca rossi*, Ross Seal.

ANNEX B Specially protected areas

Areas recommended for inclusion in this Annex pursuant to Article IX (1) of the Antarctic Treaty

1. Taylor Rookery, Mac. Robertson Land. Lat. 67deg. 26'S, long. 60deg. 50'E.
2. Rookery Islands, Holme Bay. Lat. 67deg. 37'S, long. 62deg.33'E.
3. Ardery Island and Odbert Island, Budd Coast. Lat. 66deg. 22'S, long. 110deg. 28'E, and lat. 66deg. 22'S, long. 110deg. 33'E.
4. Sabrina Island, Balleny Islands, Lat. 66deg. 54'S, long. 163deg. 20'E.

5. Beaufort Island, Ross Sea. Lat. 76deg. 58'S, long. 167deg.03'E.
6. Cape Crozier, Ross Island. Lat. 77deg. 32'S, long. 169deg.19'E.
7. Cape Hallett, Victoria Land. Lat. 72deg. 18'S, long. 170deg.19'E.
8. Dion Islands, Marguerite Bay, Antarctic Peninsula. Lat. 67deg.52'S, long. 68deg. 43'W.
9. Green Island, Berthelot Islands, Antarctic Peninsula.Lat. 65deg. 19'S, long. 64deg. 10'W.
10. Byers Peninsula, Livingston Island, South Shetland Islands.Lat. 62deg. 38'S, long. 61deg. 05'W.
11. Cape Shirreff, Livingston Island, South Shetland Islands.Lat. 62deg. 28'S, long. 60deg. 48'W.
12. Fildes Peninsula, King George Island, South Shetland Islands.Lat. 62deg. 11'S, long. 58deg. 52'W.
13. Moe Island, South Orkney Islands. Lat. 60deg. 45'S, long. 45deg. 41'W.
14. Lynch Island, South Orkney Islands. Lat. 60deg. 40'S, long. 45deg. 38'W.
15. Southern Powell Island and adjacent islands, South Orkney Islands. Lat. 60deg. 45'S, long. 45deg. 02'W.
- [[16. Coppermine Peninsula, Robert Island. Lat. 62deg. 23'S, long. 59deg. 42'W.]]

Item 16 was added by clause 2 of the Antarctica (Specially Protected Areas) Order 1971 (S.R. 1971/279).

ANNEX C

Importation of animals and plants

The following animals and plants may be imported into the Treaty Area in accordance with permits issued under Article IX (2) of these Agreed Measures:

- (a) sledge dogs,
- (b) domestic animals and plants,
- (c) laboratory animals and plants.

ANNEX D

Precautions to prevent accidental introduction of parasites and diseases into the Treaty Area

The following precautions shall be taken:

1. Dogs: All dogs imported into the Treaty Area shall be inoculated against the following diseases:
 - (a) distemper;
 - (b) contagious canine hepatitis;
 - (c) rabies;
 - (d) leptospirosis (*L. canicola* and *L. icterohaemorrhagicae*).

Each dog shall be inoculated at least 2 months before the time of its arrival in the Treaty Area.

2. Poultry: Notwithstanding the provisions of Article IX (3) of these Agreed Measures, no living poultry shall be brought into the Treaty Area after 1st July, 1966.]

This Schedule was added by s. 3 (c) of the Antarctica Amendment Act 1970.

Amending Act/Rule(s)

1 The Antarctica Amendment Act 1970