Antarctic (Environment Protection) Legislation Amendment Bill 1992

Date Introduced: 14 October 1992
House: House of Representatives
Portfolio: Arts, Sport, the Environment and Territories

Purpose
To give effect at Australian law to the Protocol on Environmental Protection to the Antarctic Treaty. The main amendments provide for the designation of Antarctic Specially Protected Areas and Antarctic Specially Managed Areas; environmental impact assessment; and a prohibition on mining.

Background
In June 1991, the parties to the Antarctic Treaty (the parties), meeting in Madrid, Spain, approved the Protocol on Environmental Protection to the Antarctic Treaty (the Protocol). The Protocol was adopted by the parties and opened for signature on 4 October 1991. Australia became a signatory to the Protocol on 4 October 1991. Other States that are signatories to the Protocol include the Commonwealth of Independent States, Canada, China, France, Germany, New Zealand, the UK, and the USA. The Protocol will come into force when it has been ratified by all 26 existing parties (Article 23 of the Protocol).

Brief Outline of the Protocol and Annexes:

Objective of the Protocol: The Protocol establishes a regime under which the parties "commit themselves to the comprehensive protection of the Antarctic environment and dependent and associated ecosystems and hereby designate Antarctica as a natural reserve, devoted to peace and science" (Article 2 of the Protocol).

Environmental Principles: Article 3 of the Protocol sets out the environmental principles upon which the proposed regime is based. The environmental principles include that:

* "activities ... be planned and conducted so as to limit adverse impacts on the Antarctic environment and dependent and associated ecosystems"; and

* "activities ... be planned and conducted so as to avoid:
  (i) adverse effects on climate or weather patterns;
  (ii) significant adverse effects on air or water quality;
  (iii) significant changes in the atmospheric, terrestrial (including aquatic), glacial or marine environments;
  (iv) detrimental changes in the distribution, abundance or productivity of species or populations of species of fauna and flora;
  (v) further jeopardy to endangered or threatened species or populations of such species; or
  (vi) degradation of, or substantial risk to, areas of biological, scientific, historic, aesthetic or wilderness significance*.

Prohibition on Mining: Article 7 of the Protocol prohibits "Any activity relating to mineral resources, other than scientific research."

Committee for Environmental Protection: Article 11 of the Protocol establishes a Committee for Environmental Protection (the Committee). The functions of the Committee are to provide advice and make recommendations to the parties in connection with the implementation of the Protocol and the operation of the Protocol's Annexes for consideration at Antarctic Treaty Consultative Meetings, including advice on the application and implementation of the environmental impact assessment procedures and the state of the Antarctic environment.
Environmental Impact Assessment: Annex I sets out procedures for environmental impact assessment which apply to all proposed activities in Antarctica. Article 8 of the Protocol breaks down activities into three categories, based on their impact on the Antarctic environment or on dependent or associated ecosystems. Activities are those that have less than a minor or transitory impact; a minor or transitory impact; or more than a minor or transitory impact. Under Article 1(2) of Annex I, if an activity is determined as having less than a minor or transitory impact, the activity may proceed forthwith. In all other cases an Initial Environment Evaluation (IEE) has to be prepared (Article 2(1) of Annex I), and where an IEE indicates that a proposed activity is likely to have more than a minor or transitory impact, a Comprehensive Environmental Evaluation (CEE) has to be prepared (Article 3(1) of Annex I).

Conservation of Antarctic Fauna and Flora: Annex II deals with the Conservation of Antarctic Fauna and Flora. Article 3 of Annex II prohibits taking or harmful interference except in accordance with a permit. 'Take' or 'taking' is defined by Article 1 of Annex II to include the killing, injuring, capturing, handling or molesting, of a native mammal or bird. 'Harmful interference' is defined by Article 1 of Annex II to include using explosives or firearms in a way that disturbs concentrations of birds and seals; flying or landing helicopters in a way that disturbs concentrations of birds and seals; and any activity that results in the significant adverse modification of habitats of any species or population of native mammal, plant or invertebrate. Permits are only to be issued for certain specified purposes, including to provide specimens for scientific study or scientific information, and unavoidable consequences of scientific activities or the construction and operation of scientific support facilities (Article 3(2) of Annex II). Permits are not allowed to be issued to take a Specially Protected Species, (Note: Specially Protected Species' are listed in Appendix A of Annex II) unless the taking is for a compelling scientific purpose; will not jeopardise the survival or recovery of that species or local population; and uses non-lethal techniques where appropriate (Article 3(5) of Annex II). No species of animal or plant not native to the Antarctic Treaty area is to be introduced onto land or ice shelves, or into water except with a permit (Article 4(1) of Annex II). The introduction of dogs onto land or ice shelves is prohibited and dogs currently there are to be removed by 1 April 1994 (Article 4(2) of Annex II).

Waste Disposal and Waste Management: Annex III deals with waste disposal and waste management. Article 1(3) of Annex III provides that waste storage, disposal and removal from the Antarctic Treaty area, as well as recycling and source reduction are to be essential considerations in the planning and conduct of activities in the Antarctic Treaty area. Article 1(5) of Annex III requires generators and users of past and present waste disposal sites and abandoned work sites to clean them up (Note: This requirement does not apply to historic sites or where the cleanup would result in greater adverse environmental impact). Article 2 of Annex III sets out wastes that have to be removed, by the generator, from the Antarctic Treaty area. Article 3 of Annex III allows for the incineration, in incinerators which to the maximum extent practicable reduce harmful emissions, of certain wastes. Solid residue of incineration is to be removed from the Antarctic Treaty area, and all open burning of waste is to be phased out by the end of the 1998-99 season. Sewage and domestic liquid waste may be discharged directly into the sea, provide that discharge is located, wherever practicable, where conditions exist for initial dilution and rapid dispersal; and large quantities of waste is treated at least by maceration (Article 5(1) of Annex III). No PCBs, non-sterile soil, polystyrene beads, chips or similar packaging, or pesticides (other than required for scientific, medical or hygiene purposes) are to be introduced onto land or ice shelves, or into water in the Antarctic Treaty area (Article 7 of Annex III). Each party to the Antarctic Treaty is required to establish a waste disposal classification system to record wastes and prepare and annually review a waste management plan (Article 8 of Annex III).

Area Protection and Management: Annex V deals with the protection and management of areas designated as either an Antarctic Specially Protected Area (ASPA) or an Antarctic Specially Managed Area (ASMA). Activities in an ASPA or ASMA are to be prohibited, restricted or managed in accordance with management plans adopted under the provision of Annex V (Article 2 of Annex V). An area may be designated an ASPA to protect outstanding environment, scientific, historic, aesthetic or wilderness values (Article 3(1) of Annex V). Entry into an ASPA is prohibited except in accordance with a permit (Article 3(4) of Annex V). Any party, the Committee, the Scientific Committee for the Antarctic Research or the Commission for the Conservation of Antarctic Marine Living Resources may propose an area for designation as an ASPA or an ASMA (Article 5(1) of Annex V). ASMA's may include areas where activities pose risks of mutual interference or cumulative environmental impacts, and sites or monuments of recognised historic value (Article 4(2) of Annex V). Proposed management
plans are to include certain matters, including management activities which are to be undertaken to protect the values for which special protection or management is required; in respect of an area proposed for designation as an ASPA, a description of conditions under which permits may be granted for access to and movement within or over the area; and in respect of an area proposed for designation as an ASMA, a code of conduct regarding certain matters, including the taking of or harmful interference with native flora and fauna (Article 5 of Annex V).

Main Provisions

A new section 7A will be inserted into the Antarctic Treaty (Environment Protection) Act 1980 (the Principal Act) by clause 8 that will require the Minister, when exercising powers and performing duties under the Principal Act, to act in a way that is consistent with the basic environmental principles. (Note: The Environmental Principles are set out in Article 3 of the Protocol (see p. 1 of the 'Background' to this Digest)).

New sections 8 and 8A, that deal with ASPA's and ASMA's and which will give effect to Australia's obligations under Annex V (see pp. 2 and 3 of the 'Background' to this Digest), will be substituted and inserted into the Principal Act by clause 11. The principal effects of proposed section 8 will be to allow the Governor-General to declare a specified area an ASPA or ASMA, and that an area may not be so declared unless the parties have adopted a management plan. The principal effects of proposed section 8A will be to allow the Governor-General to declare a specified site or monument to be a historic site or monument; and that such a site or monument may not be so declared unless the parties have approved the listing of the site or monument.

The amendments proposed by clause 13 to section 10 of the Principal Act (Note: section 10 deals with permits for the killing, taking, injuring or interfering with a native bird or native mammal) will enable Australia to meet obligations under Annex II (see p. 2 of the 'Background' to this Digest). The principal effects of clause 13 include to:
* make it a condition of a permit relating to a bird or mammal, that the bird or mammal is to be dealt with in a way that involves the least degree of pain and suffering practicable;
* provide that a permit is not to authorise a person to gather, collect, endanger or interfere with a native plant unless the Minister is satisfied of certain matters, including that the variety of species of native plants, the habitats essential to the existence of native animals and native plants, and the balance of the natural ecological systems, existing within the Antarctic will be maintained;
* provide that a permit is not to authorise a person to bring into the Antarctic a dog or live bird not indigenous to Antarctica; and
* provide that a permit is not to authorise any activity in an ASPA for which a management plan has been adopted, unless the activity can be carried out in accordance with the plan.

A new Part 3 (proposed sections 12A-12Q), that deals with environmental impact assessment and will give effect to Australia's obligations under Annex I (see p. 2 of the 'Background' to this Digest), will be inserted into the Principal Act by clause 15. The object of proposed Part 3 is to provide for the assessment of proposed activities in Antarctica to identify their likely impact, and regulate activities that are likely to have an adverse environmental impact (proposed section 12B). The Minister may determine that specified activities will not require an environmental impact assessment where satisfied they are likely to have no more than a negligible impact on the Antarctic environment (proposed section 12C). A person or organisation proposing to carry on an activity in the Antarctic is to provide the Minister with a preliminary assessment of the impact (if any) that the activity is likely to have on the environment (proposed section 12D). Where the Minister determines that the proposed activity is likely to have no more than a negligible impact on the environment, the Minister is to authorise the activity (Note: an authorisation may be subject to conditions) (proposed section 12F).

Proposed section 12G provides that where the Minister determines that a proposed activity is likely to have a minor or transitory impact on the Antarctic environment, the proponent of the activity is to provide the Minister with an initial environmental evaluation. An initial environmental evaluation is a written report that contains certain information, including matters prescribed by the regulations and an assessment of the impact the activity is likely to have (Note: the assessment is to be presented in a way that allows for a reasoned conclusion to be reached on whether the activity will have a minor or transitory impact, or more than a minor or transitory impact on the environment). Where the Minister determines that the proposed activity is likely to have a minor or transitory impact on the environment, the Minister is to authorise the activity (Note: an authorisation may be subject to conditions).
Proposed section 12K provides that where the Minister determines that a proposed activity is likely to have more than a minor or transitory impact on the Antarctic environment, the proponent of the activity is to provide the Minister with a draft and final comprehensive environmental evaluation. A draft and final comprehensive environmental evaluation is a written report that contains certain information, including matters prescribed by the regulations; a comprehensive assessment of the impact the activity is likely to have on the environment; and recommendations as to the measures (if any) considered necessary for assessing and verifying any impact on the environment. The Minister is to authorise a proposed activity if satisfied the activity, either as proposed or with modifications, can be carried on in a way consistent with the basic environmental principles (Note: and authorisation may be subject to conditions) (proposed section 12L). Where the Minister does not authorise a proposed activity reasons are to be given. The Minister may vary, suspend or revoke an authorisation if satisfied a condition attaching to the authorisation has been, or is not being, complied with; or it is necessary to do so to act consistently with the basic environmental principles (proposed section 12N).

The regulations may provide for the monitoring of activities under proposed Part 3 to find out whether the activities are carried out in accordance with an authorisation, or to assess their impact on the Antarctic environment (proposed section 12Q).

Section 19 of the Principal Act sets out offences relating to the Antarctic environment. The principal amendments proposed by this Bill to section 19 will be to introduce a range of offences that will enable Australia to meet its obligations under Annex II (see p. 2 of the 'Background' to this Digest). The more interesting offences include:

* bringing into, or keeping in the Antarctic non-sterile soil, polychlorinated biphenyls, or polystyrene beads or chips or any similar kind of packaging material;
* using an explosive in a way that disturbs a concentration of birds;
* while on foot, knowingly or recklessly disturbing a concentration of birds, or birds that are breeding or moulting; and
* keeping a dog, or allowing it to remain, in the Antarctic.

New sections 19A-19C, that deal with mining in Antarctica and will give effect to Australia’s obligations under Article 7 of the Protocol, will be inserted into the Principal Act by clause 18. It will be an offence for a person to engage in mining activity in the Australian Antarctic Territory (proposed section 19A). The maximum penalty for a breach of this provision will be a fine of $100 000. Proposed section 19B provides that it will be an offence for an Australian nation to engage in mining activity in other parts of Antarctica. The maximum penalty for a breach of this provision will be a fine of $100 000. Offences against proposed sections 19A and 19B will be indictable offences (i.e. triable in a Supreme Court). However, offences against proposed sections 19A and 19B may also be heard in a court of summary jurisdiction (i.e. a Magistrates Court) if the court is satisfied it is proper to do so and the defendant and prosecutor agree that it should. The maximum penalty which may be imposed for a breach of proposed sections 19A and 19B by a court of summary jurisdiction will be a fine of $10 000 for individuals and $50 000 for corporations.

Section 29 of the Principal Act allows the Governor-General to make regulations to give effect to certain provisions of the Principal Act. Clause 25 will allow the Governor-General to make regulations prescribing:

* the procedures to be followed in dealing with a comprehensive environmental evaluation;
* the management, disposal and removal of waste from the Antarctic;
* fees for processing applications for permits and environmental impact assessment and the granting of permits and authorisations; and
* regulating the conduct of persons in an ASPA or ASMA.

The Antarctic Mining Prohibition Act 1991 will be repealed by clause 31.

Recommended Reading
