

**Reprint
as at 4 October 2013**



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

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

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Note

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

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

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

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The Parliament of New Zealand enacts as follows:

1 Title

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

2 Commencement

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

3 Principal Act amended

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

4 Consent of Attorney-General required for certain proceedings

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

5 New Part 5A inserted

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

“Part 5A

“Liability for environmental emergencies

“Preliminary provisions

“37A Purpose of Part

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

“37B Interpretation for this Part

In this Part, unless the context otherwise requires,—

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

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

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

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

“(b) occurs after this Part comes into force

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Compare: Annex VI Articles 2, 3(2)

“Responding to environmental emergencies

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

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

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

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

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

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

“Compare: Annex VI Article 4(3)

“37D New Zealand operators to take response action

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

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

“(3) However, a New Zealand operator is not liable to conviction under this section if the environmental emergency, or the failure to take prompt and effective response action, was a result of any of the circumstances described in section 37G(1)(a) to (d).

“Compare: Annex VI Article 5(1)

“Civil liability for failure to take response action

“37E Recovery of cost of response action taken by others

“(1) This section applies to an operator—

“(a) who is a New Zealand operator or a New Zealand resident operator; and

“(b) whose activities give rise to an environmental emergency; and

“(c) who fails to take prompt and effective response action.

“(2) An operator to whom this section applies is liable to pay the costs incurred by any Annex Party in taking response action.

“(3) An application for an order requiring an operator, other than a New Zealand State operator, to pay the costs incurred in taking response action may be made to the High Court by—

“(a) the Minister, if the Ministry (either directly or through an agent) took response action on behalf of New Zealand as an Annex Party; or

“(b) any person on behalf of another Annex Party that took response action, whether the response action was taken directly by the Annex Party or through an agent.

“(4) An order may be made under this section against an operator whether or not the operator knew of the environmental emergency.

“(5) An application for an order under this section may not be made more than 3 years after the later of—

“(a) the date on which the response action was begun; or

“(b) the date on which the Annex Party that took the response action knew, or ought reasonably to have known, the identity of the operator.

“(6) However, an application under this section may not be made later than 15 years after the date on which the response action was begun.

“Compare: Annex VI Articles 6(1), (3), 7(1)

“37F Order to pay money where no response action taken

“(1) This section applies to an operator—

“(a) who is a New Zealand operator or a New Zealand resident operator; and

“(b) whose activities give rise to an environmental emergency; and

“(c) who fails to take prompt and effective response action.

“(2) If no Annex Party takes prompt and effective response action, an operator to whom this section applies is liable to pay the costs of the response action that should have been undertaken.

“(3) An application for an order requiring an operator, other than a New Zealand State operator, to pay the costs of response action that should have been taken may be made to the High Court by—

“(a) the Minister (on behalf of New Zealand as an Annex Party); or

“(b) a person authorised in writing by any other Annex Party to make the application on its behalf.

“(4) The order must require the operator to pay an amount of money that the High Court determines represents the costs that would have been incurred if prompt and effective response action had been taken following the environmental emergency.

“(5) The amount of money specified in an order under this section is payable—

“(a) directly into the Environmental Protection Fund; or

“(b) to the Ministry, in which case the Ministry must pay the amount received directly into the Environmental Protection Fund.

“(6) An order may be made under this section against an operator whether or not the operator knew of the environmental emergency.

“(7) An application for an order under this section may not be made more than 15 years after the date on which the Annex Party

on whose behalf the application is made became aware of the environmental emergency to which the proceedings relate.

“Compare: Annex VI Articles 6(2), (3), 7(3)

“37G Exemptions from liability

“(1) The High Court may not make an order against an operator under section 37E or 37F if the operator proves that the environmental emergency was caused by any of the following:

“(a) an act or omission necessary to protect human life or safety:

“(b) an event constituting, in the circumstances of Antarctica, a natural disaster of an exceptional character that could not have been reasonably foreseen, either generally or in the particular case, provided that all reasonable preventative measures, designed to reduce the risk of environmental emergencies and their potential adverse impacts, were taken:

“(c) an act of terrorism:

“(d) an act of belligerency against the activities of the operator.

“(2) If the Ministry takes response action under section 37D, then neither the Ministry nor any agent specifically authorised by the Ministry to take that action is liable for any environmental emergency resulting from the response action, to the extent that the response action was reasonable in all the circumstances.

“(3) To avoid doubt, the Ministry is not liable for the failure of a New Zealand operator (other than a New Zealand State operator) to take response action.

“Compare: Annex VI Articles 8(1), (2), 10

“37H Limits on amount of liability

“(1) The amount of liability under section 37E or 37F is subject to the limitations set out in subparagraphs (a) and (b) of Article 9(1) of Annex VI (subject to Article 9(2)), as those subparagraphs are amended from time to time in accordance with Article 9(4).

“(2) The limits on liability referred to in subsection (1) do not apply if the court is satisfied that the environmental emergency re-

sulted from an act or omission of the operator that was committed with the intention of causing an emergency, or done recklessly and with knowledge that an emergency would probably result.

“Compare: Annex VI Article 9(1), (3)

“37I Joint and several liability

If an environmental emergency arises from the activities of 2 or more operators, the operators are jointly and severally liable, except that an operator who establishes that only part of the environmental emergency resulted from its activities is liable only in respect of that part.

“Compare: Annex VI Article 6(4)”.

- (2) Schedule 2, which sets out the Protocol on Environmental Protection to the Antarctic Treaty, is amended by adding Annex VI, as set out in the Schedule.

Section 5(1): amended, on 4 October 2013, by regulation 3(1) of the Criminal Procedure (Consequential Amendments) Regulations 2013 (SR 2013/409).

Schedule
Annex VI added to Schedule 2

s 5(2)

Annex VI to the Protocol on Environmental
Protection to the Antarctic Treaty
Liability Arising from Environmental
Emergencies

Preamble

The Parties,

Recognising the importance of preventing, minimising and containing the impact of environmental emergencies on the Antarctic environment and dependent and associated ecosystems;

Recalling Article 3 of the Protocol, in particular that activities shall be planned and conducted in the Antarctic Treaty area so as to accord priority to scientific research and to preserve the value of Antarctica as an area for the conduct of such research;

Recalling the obligation in Article 15 of the Protocol to provide for prompt and effective response action to environmental emergencies, and to establish contingency plans for response to incidents with potential adverse effects on the Antarctic environment or dependent and associated ecosystems;

Recalling Article 16 of the Protocol under which the Parties to the Protocol undertook consistent with the objectives of the Protocol for the comprehensive protection of the Antarctic environment and dependent and associated ecosystems to elaborate, in one or more Annexes to the Protocol, rules and procedures relating to liability for damage arising from activities taking place in the Antarctic Treaty area and covered by the Protocol;

Noting further Decision 3 (2001) of the XXIVth Antarctic Treaty Consultative Meeting regarding the elaboration of an Annex on the liability aspects of environmental emergencies, as a step in the establishment of a liability regime in accordance with Article 16 of the Protocol;

Having regard to Article IV of the Antarctic Treaty and Article 8 of the Protocol;

Have agreed as follows:

Article 1—Scope

This Annex shall apply to environmental emergencies in the Antarctic Treaty area which relate to scientific research programmes, tourism and all other governmental and non-governmental activities in the Antarctic Treaty area for which advance notice is required under Article VII(5) of the Antarctic Treaty, including associated logistic support activities. Measures and plans for preventing and responding to such emergencies are also included in this Annex. It shall apply to all tourist vessels that enter the Antarctic Treaty area. It shall also apply to environmental emergencies in the Antarctic Treaty area which relate to other vessels and activities as may be decided in accordance with Article 13.

Article 2—Definitions

For the purposes of this Annex:

- (a) “Decision” means a Decision adopted pursuant to the Rules of Procedure of Antarctic Treaty Consultative Meetings and referred to in Decision 1 (1995) of the XIXth Antarctic Treaty Consultative Meeting;
- (b) “Environmental emergency” means any accidental event that has occurred, having taken place after the entry into force of this Annex, and that results in, or imminently threatens to result in, any significant and harmful impact on the Antarctic environment;
- (c) “Operator” means any natural or juridical person, whether governmental or non-governmental, which organises activities to be carried out in the Antarctic Treaty area. An operator does not include a natural person who is an employee, contractor, subcontractor, or agent of, or who is in the service of, a natural or juridical person, whether governmental or non-governmental, which organises activities to be carried out in the Antarctic Treaty area, and does not include a juridical person that is a contractor or subcontractor acting on behalf of a State operator;
- (d) “Operator of the Party” means an operator that organises, in that Party’s territory, activities to be carried out in the Antarctic Treaty area, and;
 - (i) those activities are subject to authorisation by that Party for the Antarctic Treaty area; or

Article 2—*continued*

- (ii) in the case of a Party which does not formally authorise activities for the Antarctic Treaty area, those activities are subject to a comparable regulatory process by that Party.

The terms “its operator”, “Party of the operator”, and “Party of that operator” shall be interpreted in accordance with this definition;

- (e) “Reasonable”, as applied to preventative measures and response action, means measures or actions which are appropriate, practicable, proportionate and based on the availability of objective criteria and information, including:
 - (i) risks to the Antarctic environment, and the rate of its natural recovery;
 - (ii) risks to human life and safety; and
 - (iii) technological and economic feasibility;
- (f) “Response action” means reasonable measures taken after an environmental emergency has occurred to avoid, minimise or contain the impact of that environmental emergency, which to that end may include clean-up in appropriate circumstances, and includes determining the extent of that emergency and its impact;
- (g) “The Parties” means the States for which this Annex has become effective in accordance with Article 9 of the Protocol.

Article 3—Preventative Measures

1. Each Party shall require its operators to undertake reasonable preventative measures that are designed to reduce the risk of environmental emergencies and their potential adverse impact.
2. Preventative measures may include:
 - (a) specialised structures or equipment incorporated into the design and construction of facilities and means of transportation;
 - (b) specialised procedures incorporated into the operation or maintenance of facilities and means of transportation; and
 - (c) specialised training of personnel.

Article 4—Contingency Plans

1. Each Party shall require its operators to:
 - (a) establish contingency plans for responses to incidents with potential adverse impacts on the Antarctic environment or dependent and associated ecosystems; and
 - (b) co-operate in the formulation and implementation of such contingency plans.
2. Contingency plans shall include, when appropriate, the following components:
 - (a) procedures for conducting an assessment of the nature of the incident;
 - (b) notification procedures;
 - (c) identification and mobilisation of resources;
 - (d) response plans;
 - (e) training;
 - (f) record keeping; and
 - (g) demobilisation.
3. Each Party shall establish and implement procedures for immediate notification of, and co-operative responses to, environmental emergencies, and shall promote the use of notification procedures and co-operative response procedures by its operators that cause environmental emergencies.

Article 5—Response Action

1. Each Party shall require each of its operators to take prompt and effective response action to environmental emergencies arising from the activities of that operator.
2. In the event that an operator does not take prompt and effective response action, the Party of that operator and other Parties are encouraged to take such action, including through their agents and operators specifically authorised by them to take such action on their behalf.

Article 5—*continued*

3. (a) Other Parties wishing to take response action to an environmental emergency pursuant to paragraph 2 above shall notify their intention to the Party of the operator and the Secretariat of the Antarctic Treaty beforehand with a view to the Party of the operator taking response action itself, except where a threat of significant and harmful impact to the Antarctic environment is imminent and it would be reasonable in all the circumstances to take immediate response action, in which case they shall notify the Party of the operator and the Secretariat of the Antarctic Treaty as soon as possible.
- (b) Such other Parties shall not take response action to an environmental emergency pursuant to paragraph 2 above, unless a threat of significant and harmful impact to the Antarctic environment is imminent and it would be reasonable in all the circumstances to take immediate response action, or the Party of the operator has failed within a reasonable time to notify the Secretariat of the Antarctic Treaty that it will take the response action itself, or where that response action has not been taken within a reasonable time after such notification.
- (c) In the case that the Party of the operator takes response action itself, but is willing to be assisted by another Party or Parties, the Party of the operator shall coordinate the response action.
4. However, where it is unclear which, if any, Party is the Party of the operator or it appears that there may be more than one such Party, any Party taking response action shall make best endeavours to consult as appropriate and shall, where practicable, notify the Secretariat of the Antarctic Treaty of the circumstances.
5. Parties taking response action shall consult and coordinate their action with all other Parties taking response action, carrying out activities in the vicinity of the environmental emergency, or otherwise impacted by the environmental emergency, and shall, where practicable, take into account all

Article 5—continued

relevant expert guidance which has been provided by permanent observer delegations to the Antarctic Treaty Consultative Meeting, by other organisations, or by other relevant experts.

Article 6—Liability

1. An operator that fails to take prompt and effective response action to environmental emergencies arising from its activities shall be liable to pay the costs of response action taken by Parties pursuant to Article 5(2) to such Parties.
2.
 - (a) When a State operator should have taken prompt and effective response action but did not, and no response action was taken by any Party, the State operator shall be liable to pay the costs of the response action which should have been undertaken, into the fund referred to in Article 12.
 - (b) When a non-State operator should have taken prompt and effective response action but did not, and no response action was taken by any Party, the non-State operator shall be liable to pay an amount of money that reflects as much as possible the costs of the response action that should have been taken. Such money is to be paid directly to the fund referred to in Article 12, to the Party of that operator or to the Party that enforces the mechanism referred to in Article 7(3). A Party receiving such money shall make best efforts to make a contribution to the fund referred to in Article 12 which at least equals the money received from the operator.
3. Liability shall be strict.

Article 6—continued

4. When an environmental emergency arises from the activities of two or more operators, they shall be jointly and severally liable, except that an operator which establishes that only part of the environmental emergency results from its activities shall be liable in respect of that part only.
5. Notwithstanding that a Party is liable under this Article for its failure to provide for prompt and effective response action to environmental emergencies caused by its warships, naval auxiliaries, or other ships or aircraft owned or operated by it and used, for the time being, only on government non-commercial service, nothing in this Annex is intended to affect the sovereign immunity under international law of such warships, naval auxiliaries, or other ships or aircraft.

Article 7—Actions

1. Only a Party that has taken response action pursuant to Article 5(2) may bring an action against a non-State operator for liability pursuant to Article 6(1) and such action may be brought in the courts of not more than one Party where the operator is incorporated or has its principal place of business or his or her habitual place of residence. However, should the operator not be incorporated in a Party or have its principal place of business or his or her habitual place of residence in a Party, the action may be brought in the courts of the Party of the operator within the meaning of Article 2(d). Such actions for compensation shall be brought within three years of the commencement of the response action or within three years of the date on which the Party bringing the action knew or ought reasonably to have known the identity of the operator, whichever is later. In no event shall an action against a non-State operator be commenced later than 15 years after the commencement of the response action.
2. Each Party shall ensure that its courts possess the necessary jurisdiction to entertain actions under paragraph 1 above.

Article 7—*continued*

3. Each Party shall ensure that there is a mechanism in place under its domestic law for the enforcement of Article 6(2)(b) with respect to any of its non-State operators within the meaning of Article 2(d), as well as where possible with respect to any non-State operator that is incorporated or has its principal place of business or his or her habitual place of residence in that Party. Each Party shall inform all other Parties of this mechanism in accordance with Article 13(3) of the Protocol. Where there are multiple Parties that are capable of enforcing Article 6(2)(b) against any given non-State operator under this paragraph, such Parties should consult amongst themselves as to which Party should take enforcement action. The mechanism referred to in this paragraph shall not be invoked later than 15 years after the date the Party seeking to invoke the mechanism became aware of the environmental emergency.
4. The liability of a Party as a State operator under Article 6(1) shall be resolved only in accordance with any enquiry procedure which may be established by the Parties, the provisions of Articles 18, 19 and 20 of the Protocol and, as applicable, the Schedule to the Protocol on Arbitration.
5. (a) The liability of a Party as a State operator under Article 6(2)(a) shall be resolved only by the Antarctic Treaty Consultative Meeting and, should the question remain unresolved, only in accordance with any enquiry procedure which may be established by the Parties, the provisions of Articles 18, 19 and 20 of the Protocol and, as applicable, the Schedule to the Protocol on Arbitration.

Article 7—continued

- (b) The costs of the response action which should have been undertaken and was not, to be paid by a State operator into the fund referred to in Article 12, shall be approved by means of a Decision. The Antarctic Treaty Consultative Meeting should seek the advice of the Committee on Environmental Protection as appropriate.
6. Under this Annex, the provisions of Articles 19(4), 19(5), and 20(1) of the Protocol, and, as applicable, the Schedule to the Protocol on Arbitration, are only applicable to liability of a Party as a State operator for compensation for response action that has been undertaken to an environmental emergency or for payment into the fund.

Article 8—Exemptions from Liability

1. An operator shall not be liable pursuant to Article 6 if it proves that the environmental emergency was caused by:
- (a) an act or omission necessary to protect human life or safety;
 - (b) an event constituting in the circumstances of Antarctica a natural disaster of an exceptional character, which could not have been reasonably foreseen, either generally or in the particular case, provided all reasonable preventative measures have been taken that are designed to reduce the risk of environmental emergencies and their potential adverse impact;
 - (c) an act of terrorism; or
 - (d) an act of belligerency against the activities of the operator.
2. A Party, or its agents or operators specifically authorised by it to take such action on its behalf, shall not be liable for an environmental emergency resulting from response action taken by it pursuant to Article 5(2) to the extent that such response action was reasonable in all the circumstances.

Article 9—Limits of Liability

1. The maximum amount for which each operator may be liable under Article 6(1) or Article 6(2), in respect of each environmental emergency, shall be as follows:
 - (a) for an environmental emergency arising from an event involving a ship:
 - (i) one million SDR for a ship with a tonnage not exceeding 2,000 tons;
 - (ii) for a ship with a tonnage in excess thereof, the following amount in addition to that referred to in (i) above:
 - for each ton from 2,001 to 30,000 tons, 400 SDR;
 - for each ton from 30,001 to 70,000 tons, 300 SDR; and
 - for each ton in excess of 70,000 tons, 200 SDR;
 - (b) for an environmental emergency arising from an event which does not involve a ship, three million SDR.
2. (a) Notwithstanding paragraph 1(a) above, this Annex shall not affect:
 - (i) the liability or right to limit liability under any applicable international limitation of liability treaty; or
 - (ii) the application of a reservation made under any such treaty to exclude the application of the limits therein for certain claims;

provided that the applicable limits are at least as high as the following: for a ship with a tonnage not exceeding 2,000 tons, one million SDR; and for a ship with a tonnage in excess thereof, in addition, for a ship with a tonnage between 2,001 and 30,000 tons, 400 SDR for each ton; for a ship with a tonnage from 30,001 to 70,000 tons, 300 SDR for each ton; and for each ton in excess of 70,000 tons, 200 SDR for each ton.

Article 9—continued

- (b) Nothing in subparagraph (a) above shall affect either the limits of liability set out in paragraph 1(a) above that apply to a Party as a State operator, or the rights and obligations of Parties that are not parties to any such treaty as mentioned above, or the application of Article 7(1) and Article 7(2).
- 3. Liability shall not be limited if it is proved that the environmental emergency resulted from an act or omission of the operator, committed with the intent to cause such emergency, or recklessly and with knowledge that such emergency would probably result.
- 4. The Antarctic Treaty Consultative Meeting shall review the limits in paragraphs 1(a) and 1(b) above every three years, or sooner at the request of any Party. Any amendments to these limits, which shall be determined after consultation amongst the Parties and on the basis of advice including scientific and technical advice, shall be made under the procedure set out in Article 13(2).
- 5. For the purposes of this Article:
 - (a) “ship” means a vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and fixed or floating platforms;
 - (b) “SDR” means the Special Drawing Rights as defined by the International Monetary Fund;
 - (c) a ship’s tonnage shall be the gross tonnage calculated in accordance with the tonnage measurement rules contained in Annex I of the International Convention on Tonnage Measurement of Ships, 1969.

Article 10—State Liability

A Party shall not be liable for the failure of an operator, other than its State operators, to take response action to the extent that that Party took appropriate measures within its competence, including the adoption of laws and regulations, administrative actions and enforcement measures, to ensure compliance with this Annex.

*Article 11—Insurance and Other Financial
Security*

1. Each Party shall require its operators to maintain adequate insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover liability under Article 6(1) up to the applicable limits set out in Article 9(1) and Article 9(2).
2. Each Party may require its operators to maintain adequate insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover liability under Article 6(2) up to the applicable limits set out in Article 9(1) and Article 9(2).
3. Notwithstanding paragraphs 1 and 2 above, a Party may maintain self-insurance in respect of its State operators, including those carrying out activities in the furtherance of scientific research.

Article 12—The Fund

1. The Secretariat of the Antarctic Treaty shall maintain and administer a fund, in accordance with Decisions including terms of reference to be adopted by the Parties, to provide, *inter alia*, for the reimbursement of the reasonable and justified costs incurred by a Party or Parties in taking response action pursuant to Article 5(2).
2. Any Party or Parties may make a proposal to the Antarctic Treaty Consultative Meeting for reimbursement to be paid from the fund. Such a proposal may be approved by the Antarctic Treaty Consultative Meeting, in which case it shall be approved by way of a Decision. The Antarctic Treaty Consultative Meeting may seek the advice of the Committee of Environmental Protection on such a proposal, as appropriate.
3. Special circumstances and criteria, such as: the fact that the responsible operator was an operator of the Party seeking reimbursement; the identity of the responsible operator remaining unknown or not subject to the provisions of this Annex; the unforeseen failure of the relevant insurance company or financial institution; or an exemption in Article 8 applying, shall be duly taken into account by the Antarctic Treaty Consultative Meeting under paragraph 2 above.

Article 12—*continued*

4. Any State or person may make voluntary contributions to the fund.

Article 13—Amendment or Modification

1. This Annex may be amended or modified by a Measure adopted in accordance with Article IX(1) of the Antarctic Treaty.
 2. In the case of a Measure pursuant to Article 9(4), and in any other case unless the Measure in question specifies otherwise, the amendment or modification shall be deemed to have been approved, and shall become effective, one year after the close of the Antarctic Treaty Consultative Meeting at which it was adopted, unless one or more Antarctic Treaty Consultative Parties notifies the Depositary, within that time period, that it wishes any extension of that period or that it is unable to approve the Measure.
 3. Any amendment or modification of this Annex which becomes effective in accordance with paragraph 1 or 2 above shall thereafter become effective as to any other Party when notice of approval by it has been received by the Depositary.
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Reprints notes

1 *General*

This is a reprint of the Antarctica (Environmental Protection: Liability Annex) Amendment Act 2012 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, will have the status of an official version once issued by the Chief Parliamentary Counsel under section 17(1) of that Act.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Criminal Procedure (Consequential Amendments) Regulations 2013 (SR 2013/409): regulation 3(1)
