

Antarctica (Environmental Protection: Liability Annex) Amendment Bill

8 May 2009

Attorney-General

LEGAL ADVICE

CONSISTENCY WITH THE NEW ZEALAND BILL OF RIGHTS ACT 1990:

ANTARCTICA (ENVIRONMENTAL PROTECTION: LIABILITY ANNEX) AMENDMENT BILL

1. We have considered whether the Antarctica (Environmental Protection: Liability Annex) Amendment Bill (PCO 13129/6.0) ('the Bill') is consistent with the New Zealand Bill of Rights Act 1990 ('Bill of Rights Act'). We understand that this Bill is likely to be considered by the Cabinet Legislation Committee at its meeting on Thursday, 14 May 2009.
2. The Bill amends the Antarctica (Environmental Protection) Act 1994 (the 'Act') by inserting a new Part 5A. The purpose of this new Part is to implement Annex VI to the Protocol on Environmental Protection to the Antarctic Treaty (the 'Liability Annex'). The Antarctic Treaty countries are seeking to approve the Liability Annex so that it can enter into force. The Liability Annex deals with liability for environmental emergencies occurring in Antarctica.
3. The Bill requires operators (those organising or conducting Antarctic activities) to notify the Ministry of Foreign Affairs and Trade if they cause or discover an environmental emergency. Operators must also take prompt and effective response action when their activities give rise to an environmental emergency. The Bill also establishes liability of operators for costs incurred by an Annex Party taking prompt and effective response action where the operator has failed to do so. If no such action has been taken by an Annex Party, an amount equivalent to the costs that would have been incurred will be paid by the operator into an Environmental Protection Fund.
4. The Bill also proposes to set out the situations in which an operator is exempt from liability, to impose a financial limit on liability and to include offence provisions for operators who do not comply with their obligations to notify or to take prompt and effective response action in case of an environmental emergency.
5. We have reached the conclusion that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act.

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any other purpose. The advice does no more than assess whether the Bill complies with the minimum guarantees contained in the New Zealand Bill of Rights Act. The release of this advice should not be taken to indicate that the Attorney-General agrees with all aspects of it, nor does its release constitute a general waiver of legal professional privilege in respect of this or any other matter.