



Treaties and International Law

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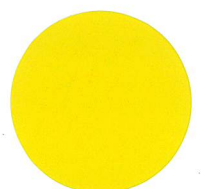
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ENVIRONMENT and SCIENCE

44. Liability Annex to the Protocol on Environmental Protection to the Antarctic Treaty

Common name: Antarctic Liability Annex

The Annex establishes a regime of liability for damage to the Antarctic environment arising from activities conducted there. Operators are obliged to take preventative measures to reduce the likelihood of accidents harming the Antarctic environment, to establish contingency plans to deal with harmful incidents and to take prompt response action when environmental emergencies arise from their activities. If prompt response action to protect the environment is not taken by an operator, other Parties are encouraged to do so, and the defaulting operator will reimburse their costs. The Annex also establishes legal mechanisms for the recovery of these costs, sets out the situations in which liability shall be exempted, requires Antarctic operators to have insurance (including the option of self-insurance in the case of Government operators), and imposes a financial limit on liability (expressed in International Monetary Fund Special Drawing Rights, equivalent to a minimum of US\$1.5 million for environmental emergencies involving a ship, and US\$4.5 million for other environmental emergencies). Liability is strict, and attaches to both State and non-State operators.

Lead agencies: Ministry of Foreign Affairs and Trade

Status: Multilateral. The Annex was adopted by the Antarctic Treaty Consultative Meeting in June 2005, and is now open for approval by Parties. New Zealand is currently working towards approving the Annex.

Legislation required: Yes. Amendments to the Antarctica (Environmental Protection) Act 1994 will be required to ensure New Zealand complies with the Annex's obligations. An Antarctica (Environmental Protection: Liability Annex) Amendment Bill was introduced to Parliament in June 2009 and referred to the Foreign Affairs, Defence and Trade Committee. The Committee's report on the Bill was presented to the House on 26 November 2009.

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45. The Kyoto Protocol to the United Nations Framework Convention on Climate Change

Common name: The Kyoto Protocol

The Kyoto Protocol was adopted on 11 December 1997 in response to a decision of the Parties to the United Nations Framework Convention on Climate Change in March 1995, that their original commitments would be insufficient to prevent human induced effects on the global climate. The Kyoto Protocol sets greenhouse emission limitation or reduction targets for "Annex I" countries (developed countries and Economies in Transition) to be achieved in the first commitment period from 2008 to 2012, with a view to reducing their overall emissions of such gases by at least 5 per cent below 1990 levels during this period. It was opened for signature on 16 March 1998, and New Zealand ratified the Protocol on 19 February 2002. It entered into force in February 2005.

Negotiations are currently underway to establish a second commitment period for the Kyoto Protocol, which is expected to commence on 1 January 2013 immediately after the end of the first commitment period. The establishment of a second commitment period requires amendments to the targets for Annex I Parties inscribed in Annex B of the Kyoto Protocol, and a number of consequential amendments to the body of the Protocol. Parties are also engaged in wider negotiations on possible improvements to the Protocol and its rules for interpreting Parties' commitments. It is possible that, given the links with negotiations under the United Nations Framework Convention on Climate Change (see entry below), the final outcome may not be an amended version of the Kyoto Protocol, but rather a new treaty instrument.

Lead agencies: Ministry for the Environment

Status: Multilateral. Negotiations are ongoing. States are looking to COP 16 in Cancun (December 2010) to make further progress, with the aim of concluding negotiations in late 2011 in South Africa. Timing for any parliamentary treaty examination process would be subject to the conclusion of negotiations.

Website: www.unfccc.int

Particular interest to Māori and other groups: Details of what the impact on Māori under a new treaty will be are unknown at present. Domestic policy responses giving effect to a new treaty could possibly reflect those that have occurred under the domestic policy response to the current treaty, e.g. the emissions trading scheme. There has been engagement with Māori on domestic policy that gives effect to the current treaty, and it is expected that this will continue.

Domestic policy responses giving effect to the treaty are likely to have some impact on NGOs, private sector companies and industry organisations in much the same way as domestic policy has developed to date. The emissions trading scheme will affect all sectors in some way by placing a price on carbon. Clearer details of what the impact will be with a new treaty are unknown at present.

Legislation required: Yes. It is expected that prior to ratification an amendment to the Climate Change Response Act (2002) would be required, possibly in 2011 - 2012.

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