

The laws of the Australian Antarctic Territory

The Australian Antarctic Territory has only transient inhabitants, and few of them. It has none of the legal infrastructure of an inhabited state, such as police or courts, but its legal regime is still relatively complex and contains a significant body of law, particularly environmental law.

The *Australian Antarctic Territory Act 1954* is the basis for Territory law. It provides for Commonwealth laws expected to extend to the Territory, for Territory ordinances, for application of Australian Capital Territory laws (except criminal laws) and for application of Jervis Bay Territory criminal laws.

Commonwealth laws made expressly for the territory focus largely on the protection of the environment. Many flow from international obligations arising from Australia's participation in the Antarctic Treaty system, so Commonwealth laws enacted specifically for the territory are generally to enable Australia to ratify the international agreements. Examples of such laws are the *Antarctic Treaty*

(*Environment Protection Act 1980* (amended in 1992 to implement the Madrid Protocol) and the *Antarctic Marine Living Resources Conservation Act 1981* (which implements the Convention on the Conservation of Antarctic Marine Living Resources). In Australia international agreements cannot be enforced against individuals until they become law.

Ordinances made under the Australian Antarctic Territory Act are specific to the territory and apply to everyone there. These 'State' type laws include the Criminal Procedure Ordinance 1993 (enabling enforcement of the other laws such as the environmental laws) and the Weapons Ordinance 2001 (implementing the National Firearms Agreement), allowing weapons to be used only for scientific research in very limited circumstances). Ordinances apply only to the territory, whereas laws enacted to fulfil Australia's obligations under the Antarctic Treaty system have a wider application and apply to Australians anywhere in the Treaty area.

Finally, Australian Capital Territory non-criminal laws and the Jervis Bay Territory criminal laws are applied to fill any voids insofar as there are no specific laws. Such applied laws operate in the same way that Ordinances do in that they do not apply outside the territory.

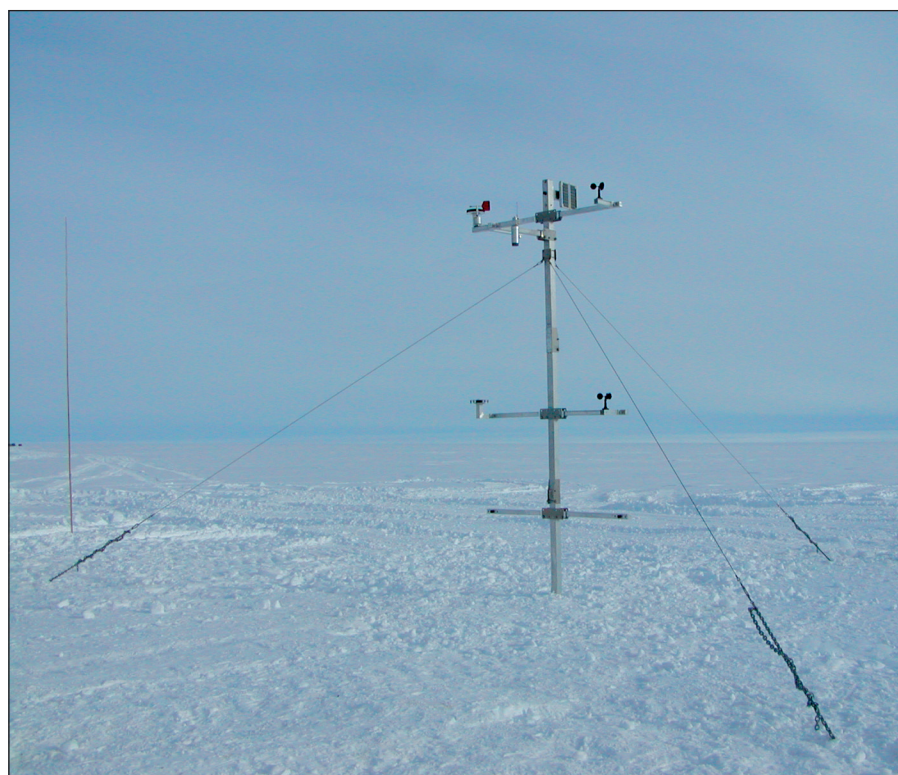
The Madrid Protocol, signed in 1991, could only enter into force following ratification by all Parties. Australia's legal system requires that implementing legislation be passed by the Parliament. As Australia had been instrumental in developing the Madrid Protocol, the Government gave a high priority to implementation. The *Antarctic (Environment Protection) Legislation Amendment Act* was passed in 1992 and by 1994 all necessary regulations had been made. As a consequence, Australia was the first country to ratify the Protocol on the basis of new legislation.

Wendy Fletcher, Legal Adviser, AAD

Assessing the impact of Australian activities

Under the Madrid Protocol, protection of the Antarctic environment is a 'fundamental consideration in the planning and conduct of all activities in the Antarctic Treaty area.' Proponents of activities must consider the environmental aspects of their activity and seek environmental advice at the earliest planning stages.

Environmental impact assessment of Australian activities in Antarctica may be required under two Commonwealth laws. The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC) applies throughout the Australian jurisdiction, including the Australian Antarctic Territory, and to Australian citizens and residents, Australian corporations, the Commonwealth and Commonwealth agencies, and Australian aircraft and vessels and their crews, anywhere in the world. EPBC requires that actions which are likely to have a significant impact on specific matters of national environmental significance are subject to a rigorous assessment and approval process. These matters include: Commonwealth marine areas, listed threatened species and ecological communities, listed migratory species and World Heritage properties. The EPBC assessment and approval process also applies to actions on



LINCOLN MAINSBRIDGE

All activities require an environmental impact assessment, even an automatic weather station on a featureless ice plateau.

Commonwealth land which are likely to have a significant impact on the environment, actions outside Commonwealth land which

are likely to have a significant impact on the environment on Commonwealth land, and actions by the Commonwealth which

are likely to have a significant impact on the environment anywhere in the world.

The *Antarctic Treaty (Environment Protection) Act* (ATEP) implements Australia's obligations under the Madrid Protocol. Under this act, an assessment is required for any activity proposed to be undertaken in the AAT or by an Australian in Antarctica. For activities in the Territory of Heard Island and McDonald Islands, Australia is following the Antarctic assessment model.

The ATEP assessment process is three-tiered. A preliminary assessment is required for all activities: the activity will be authorised if its likely impacts are determined to be less than minor or transitory. If the preliminary assessment determines that the activity is likely to have a minor or transitory impact, an initial environmental evaluation (IEE) will be necessary, considering in more detail the elements of an activity, likely environmental impacts and possible alternative activities. There is a public consultation phase, and IEEs are made available to other Antarctic Treaty Parties on request. The IEE process may take three months.

If it is determined that the impact of an activity will be more than minor or transitory, a comprehensive evaluation will be required. This demands a thorough examination of the activity, the receiving environment and alternatives. The process is subject to wide public consultation and drafts are circulated to other Antarctic Treaty Parties and tabled at a meeting of the Committee for Environment Protection. The process may take up to two years to complete.

The AAD's Environmental Management and Audit Unit (EMAU) was established so that environmental issues could be managed at arm's length from proponents of activities, found mainly in research and operational areas. Unit staff provide advice on compliance and best practice during planning of activities, and on receiving an environmental impact assessment advise the Minister's delegate on matters to be considered before approval is given.

Guidelines for assessing activities in the Antarctic, produced by the Committee for Environmental Protection, have been adapted by the AAD for Australian legislation and regulations. The legislation and guidelines, with proforma for preliminary assessments, are available on the AAD's 'Environment' web page at <<http://www.aad.gov.au/environment/eia/default.asp>>.

Tom Maggs, Environmental Management and Audit Unit Manager, AAD

Permits: essential environmental safeguards



WAYNE PAPPS

All Australian biological field work in Antarctica requires a permit, including this long-running Béchervaise Island Adélie penguin monitoring program

The Madrid Protocol imposes on all Antarctic Treaty nations, including Australia, the obligation to impose limits on what people may do in the Antarctic, whether participating in a national program or visiting in a private capacity. The Protocol is given effect for Australian activities by a 1994 amendment to the *Antarctic Treaty (Environment Protection) Act 1980*.

Under this legislation no Australian may remove or interfere with any Antarctic animal or plant without a permit, unless the action was for the establishment, supply or operation of a station, in the case of an emergency or to protect the environment.

Permits allow collecting of animal and plant specimens for scientific, educational or cultural purposes only. The permit-holder may take no more animals than can be replaced by the next breeding season and must ensure that habitats, species variety and ecosystem balance for the area are maintained.

Native animals and plants may be given added protection by being designated under the Madrid Protocol specially protected species. All species of fur seal and the Ross seal are currently on this list.

The legislation makes it an offence to disturb animals with a helicopter, a vehicle, a vessel or on foot without a specific permit. Over the past few seasons Australian scientists and environmental officers have determined minimum approach distances to minimise

disturbance. These distances are set out in the Australian Guidelines: *Flight paths for helicopter operations in Australian Antarctic Territory* and *Environmental Code of Conduct*, both of which are available on the Australian Antarctic Division website at <<http://www.aad.gov.au>>.

Protected areas established under the 1964 Agreed Measures for the Conservation of Fauna and Flora to preserve unique natural systems or scientific values are covered by the Act. A permit to enter a protected area will only be granted if the activity is authorised by the area's management plan. The permit may have conditions.

Before a permit is granted for an activity, the potential environmental impact of the activity must be assessed. Permits are generally issued yearly for multi-year projects to ensure that they reflect approved annual work programs and that they are consistent with all relevant approvals, including Antarctic Animal Ethics Committee conditions. About 30 permits are granted by Australia annually under the Act for activities in Antarctica.

The Australian Antarctic Division is presently seeking to integrate the processes for permit approvals, authorisations under EIA legislation and other approval requirements for people proposing activities in Antarctica.

More information on activities requiring permits is available at <http://www.aad.gov.au/environment/permits/activities_rqrng_permits.asp>

Maxine Wolf, Permits Officer, AAD