

**Submission to the Foreign Affairs, Defence and Trade on the Antarctica  
(Environmental Protection: Liability Annex) Amendment Bill**

The National Council of Women of New Zealand (NCWNZ) is an umbrella organisation representing 50 nationally organised societies and National Members. It has 26 Branches throughout the country attended by representatives of those societies and some 150 other societies as well as individual members. The Council's function is to serve women, the family and the community at local, national and international levels through research, study, discussion and action. The Council has a long history of commenting on environmental issues.

NCWNZ responses were unanimous in supporting the intention behind this Bill, which is to establish liability and recompense for damage caused to the Antarctic environment. NCWNZ has made many submissions on this subject over the last 16 years. This submission has been prepared by the Environment Convener, with input from branches and individuals, and a contribution from the Convener of Public Affairs. It has been reviewed by the Parliamentary Watch Committee and a Board member of the National Council of Women of New Zealand.

**(1) "In Part 5A Liability for environmental emergencies"**

**37B: Interpretation for this Part**

**"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..."

**"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 of equipment ...

(b) specialised procedures incorporated in the operation ...

(c) specialised training of personnel"

Responses were strongly supportive of this Part (5A). All emphasised the requirement for preventative measures, which has been part of NCWNZ policy since 1993. Members are saddened at the despoliation of the Antarctic which has already taken place. This is regarded as a relatively uncontaminated, fragile, sensitive and pristine environment, in which extreme care should be taken by all visitors. Those who deliberately damage it should be banned from future visits. Members are concerned at the commercialisation of Antarctica.

Members thought it was essential that prompt, effective action be undertaken in the event of an environmental emergency.

The ocean rubbish that has built up in the Antarctic area is seen as the result of behaviour which should be preventable.

The addition of two further points is suggested:

“(d) proactive scanning for new preventative technologies and new types of emergencies which would require new responses.”

“(e) a limit on size of vessels above 2,000 tons, thus limiting size of impact in event of accident.”

Members do not want to see a major catastrophe in Antarctic waters such as the Exxon Valdez oil spill of 1989. Smaller ships visiting the area, would limit the risk of a major environmental disaster.

## **(2) “37D: New Zealand operators to take response action”**

*There is a requirement for operators to take prompt and effective response action, or face a fine not exceeding \$200,000 and/or a prison term of 2 years. Costs of appropriate action may be recovered by the party who rectified the situation.*

Would NZ \$200,000 be sufficient compensation for carelessness/ laziness/ignorance? Delayed action can be much more costly.

A yearly payment to a clean-up fund should be required to ensure money is immediately available.

## **“37F: Order to pay money where no response action taken”**

*An operator who creates an environmental emergency may face a high court action to pay the cost of response action that should have been taken. The amount is paid directly to the Environmental Protection Fund, or to the Ministry.*

Penalties should be linked to inflation, to avoid the need for further amendments.

Trying to pursue irresponsible operators through the courts can be fruitless.

As noted under 37D above, a yearly payment to a clean-up fund should be required to ensure money is immediately available.

## **(3) “Schedule Annex VI added to Schedule 2 – Annex VI to the Protocol on Environmental Protection to the Antarctic Treaty. “Liability Arising From Environmental Emergencies**

### **“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...*
  - (b) *specialised procedures ...*
  - (c) *specialised training of personnel.”*

In respect of preventative measures, it was unanimously agreed that this should be more highly emphasised in the Bill - see under 37B above, the suggested addition of a point (d) - proactive scanning for new preventative technologies and new types of emergencies which would require new responses.

Some members suggested that responsible tourist operators could be rewarded by authorising them to state that they have been accredited as responsible operators, when they advertise their tours. However, others thought that there should not be rewards for action which was expected under the regulations. Certainly rewards should **not** include granting more territory and greater rights. There could be rules about exclusion from the area if operators cannot prove preparedness with adequate resources and trained personnel.

**(4) “Article 9 – Limits of Liability”**

*There are limits set out to the liability, for instance: one million SDR for a ship with a tonnage not exceeding 2,000 tons.*

**“Article 11 – Insurance and other Financial Security**

*Each Party (Nation signing the Bill) shall require its operators to maintain adequate insurance or other financial security...”*

Members agreed with Articles 9 and 11. The limits in Article 9 were considered reasonable since the potential for environmental damage is related to the size of the ship.

The concept of financial security is also necessary. The clean-up fund suggested above would ensure that operators are paid when required to clean up damage they have not caused.

Members agreed that it is essential for all parties to require its operators to maintain adequate insurance. However, a question must be raised regarding ships carrying tourists from a treaty partner, but being registered in a country that may not be a party to the Treaty. Who is responsible?

**Conclusion:**

NCWNZ is concerned about the extent of Antarctic tourism, namely 38,000 mostly ship-borne visitors in 2008-2009, with 43,000 predicted for 2010. While rules prevent any landings from ships carrying more than 500 passengers, and there are voluntary principles on Antarctic Tourism, the Antarctic and Southern Oceans Coalition (ASOC) has expressed concern that these developments “constitute the barest foundation of a tourist management scheme”.

Considering the incredibly stringent regulations that apply to scientists working in the Antarctic (where even a tiny yellow stain in the snow is a giveaway not to be tolerated) members thought this ‘voluntary’ principle idea seems rather lax.

As a preventative measure, no further territorial rights should be granted in the future.

NCWNZ wholeheartedly endorses the aims of the Antarctica (Environmental Protection: Liability Annex) Amendment Bill, and hopes that It can be signed and implemented as soon as possible to prevent further damage to the Antarctic environment. At all the Branch meetings where the bill was discussed, there was unanimous agreement that Antarctica is a pristine environment which must be preserved for future generations.

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