



Antarctic Treaty (Environment Protection) Amendment Act 2010

No. 23, 2010

An Act to amend the law relating to the protection of the Antarctic environment, and for related purposes

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedule(s).....	2
Schedule 1—Implementation of amendments to Annex II of the Madrid Protocol		4
Part 1—Amendments		4
<i>Antarctic Treaty (Environment Protection) Act 1980</i>		4
Part 2—Application and transitional		19



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An Act to amend the law relating to the protection of the Antarctic environment, and for related purposes

[Assented to 25 March 2010]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Antarctic Treaty (Environment Protection) Amendment Act 2010*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	25 March 2010
2. Schedule 1	The later of: (a) the day this Act receives the Royal Assent; and (b) the day Measure 16, adopted by the XXXIInd Antarctic Treaty Consultative Meeting at Baltimore on 17 April 2009, comes into force for Australia. However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur. The Minister must announce by notice in the <i>Gazette</i> the day the Measure comes into force for Australia.	8 December 2016 (C2017G00205) (paragraph (b) applies)

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule

concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Implementation of amendments to Annex II of the Madrid Protocol

Part 1—Amendments

Antarctic Treaty (Environment Protection) Act 1980

1 Subsection 3(1)

Insert:

organism includes:

- (a) a living organism at any stage of its life cycle; and
- (b) an organism that was once alive, but is now dead; and
- (c) a reproductive propagule of a living organism; and
- (d) an article containing or infected by a virus or bacterium.

2 Subsection 3(1) (definition of *specially protected species*)

After “native bird”, insert “, native invertebrate”.

3 Subsection 3(1) (definition of *take*)

Repeal the definition, substitute:

take:

- (a) in relation to a native bird or native seal—includes catch or capture; and
- (b) in relation to native plants—means to remove or damage such quantities of the plants that their local distribution or abundance would be significantly affected; and
- (c) in relation to native invertebrates—means to remove or damage such quantities of the invertebrates that their local distribution or abundance would be significantly affected.

4 Subsection 3(2)

Repeal the subsection.

5 Subsection 7C(1)

After “native bird”, insert “, native invertebrate”.

6 Subparagraph 10(1)(b)(ii)

Omit “(including display in museums, zoological gardens or other educational or cultural institutions) or such other educational or cultural purposes”, substitute “(including display in museums or other educational institutions) or such other educational purposes”.

Note: The following heading to subsection 10(1) is inserted “*Permits for taking etc. native birds and native seals*”.

7 After subparagraph 10(1)(b)(ii)

Insert:

- (ia) if the permit relates to native birds or native seals—providing specimens for zoological gardens in cases where such specimens cannot be obtained from existing captive collections elsewhere or where there is a compelling conservation need; or

8 Subparagraph 10(1)(b)(iv)

After “subparagraph (ii)”, insert “or (ia)”.

9 At the end of paragraph 10(1)(c)

Add:

- ; and (iii) if the permit is to kill a native bird or native seal of that species—there is no suitable alternative technique to achieve the purpose for which the permit is granted.

10 After subsection 10(1A)

Insert:

Permits for taking native invertebrates

(1AA) A permit must not authorise a person to take native invertebrates unless:

- (a) the Minister is satisfied that the variety of species, the habitats essential to their existence and the balance of the natural ecological systems existing within the Antarctic will be maintained; and
- (b) the permit is so expressed as to ensure, as far as possible, that the taking authorised by the permit will be carried on to the extent only that it is necessary for:

- (i) the construction and operation of scientific support facilities; or
 - (ii) providing specimens for scientific research, public education (including display in museums or other educational institutions) or such other educational purposes as the Minister thinks fit; or
 - (iii) providing specimens for zoological gardens; or
 - (iv) monitoring or conserving the environment or an historic site or monument; or
 - (v) providing for unavoidable consequences of scientific activities not authorised under subparagraph (ii) or (iii); and
- (c) in the case of a permit relating to a specially protected species:
- (i) the permit is granted for a compelling scientific purpose; and
 - (ii) the Minister is satisfied that the activities authorised by the permit will not jeopardise the existing ecological system or the survival or recovery of that species or of the local population of that species; and
 - (iii) if the permit is to kill native invertebrates of that species—there is no suitable alternative technique to achieve the purpose for which the permit is granted.

11 Subparagraph 10(1B)(b)(ii)

Omit “(including display in museums, herbaria, botanical gardens or other educational or cultural institutions) or such other educational or cultural purposes”, substitute “(including display in museums, herbaria, botanical gardens or other educational institutions) or such other educational purposes”.

Note: The following heading to subsection 10(1B) is inserted “*Permits for gathering etc. native plants*”.

12 At the end of paragraph 10(1B)(c)

Add:

- ; and (iii) if the permit is to kill (whether by collection or any other action) a native plant of that species—there is no suitable alternative technique to achieve the purpose for which the permit is granted.

Note: The following heading to subsection 10(1C) is inserted “*Permits for gathering etc. meteorites and rocks*”.

13 Subsection 10(1D)

Repeal the subsection.

14 Paragraph 10(2)(b)

Omit “that is not indigenous to the Antarctic”.

Note: The following heading to subsection 10(2) is inserted “*Permits to bring organisms into the Antarctic*”.

15 Subsection 10(3)

Repeal the subsection, substitute:

- (3) A permit must not authorise a person to bring into the Antarctic a cultivated plant that is not indigenous to the Antarctic or a reproductive propagule of such a plant other than for use under controls that ensure that it does not escape into the Antarctic environment.
- (3A) A permit must not authorise a person to bring into the Antarctic any other organism that is not indigenous to the Antarctic other than for experimental use under controls that ensure that it does not escape into the Antarctic environment.

16 Subsection 10(4)

Omit “an animal, plant, virus, bacterium, yeast or fungus that is not indigenous to the Antarctic and might cause harmful interference with the natural system if left unsupervised within the Antarctic”, substitute “an organism that is not indigenous to the Antarctic”.

17 Subsection 10(5)

Repeal the subsection, substitute:

- (5) A permit authorising a person to bring into the Antarctic organisms that are not indigenous to the Antarctic must:
 - (a) specify:
 - (i) the number of organisms to which the permit relates;
and
 - (ii) the species of the organisms; and

- (iii) a rationale justifying the introduction of the organisms;
and
 - (iv) if appropriate in the case of a permit relating to animals—the age and sex of each of the animals; and
- (b) specify as a condition of the permit that the person must take all reasonable precautions to prevent any of the organisms from escaping or coming in contact with fauna or flora.

Note: The following heading to subsection 10(6) is inserted “*Specially protected areas*”.

18 Paragraph 17(1)(a)

Omit “any animal, plant, virus, bacterium, yeast, fungus”, substitute “any organism”.

19 Subsection 18(2)

Omit “any animal, plant, virus, bacterium, yeast or fungus”, substitute “any organism”.

20 Subparagraph 19(1A)(b)(i)

Omit “, a native invertebrate”.

21 Subparagraph 19(1A)(b)(ii)

Omit “, a native invertebrate”.

22 After subparagraph 19(1A)(b)(ii)

Insert:

- (ia) causes the taking of native invertebrates or native plants in the Antarctic; or

23 Subparagraph 19(1A)(b)(iii)

Omit “, a native invertebrate”.

24 Subparagraph 19(1A)(b)(iiia)

Omit “seal; or”, substitute “seal.”.

25 Subparagraph 19(1A)(b)(iv)

Repeal the subparagraph.

26 Paragraph 19(1)(c)

Omit “an animal, plant, virus, bacterium, yeast or fungus”, substitute “an organism”.

27 After paragraph 19(1)(caa)

Insert:

(cab) bring a living bird into the Antarctic; or

28 Paragraph 19(2)(g)

Repeal the paragraph, substitute:

(g) cause or permit to escape from his or her control or the control of any other person an organism that is not indigenous to the Antarctic and has been brought into the Antarctic by virtue of a permit.

29 Paragraph 19(3)(b)

Omit “the animal (not being a live bird), plant, virus, bacterium, yeast or fungus, as the case may be,”, substitute “the organism”.

30 After section 19AB

Insert:

19AC Offence relating to the accidental introduction of micro-organisms

- (1) A person commits an offence if:
- (a) the person brings into the Antarctic an organism or an article; and
 - (b) the person, by that conduct, brings into the Antarctic a micro-organism that is not indigenous to the Antarctic.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (2) Subsection (1) does not apply if:
- (a) the person brings the organism or article into the Antarctic for use as food; or
 - (b) the person has taken all reasonable precautions to ensure that a micro-organism that is not indigenous to the Antarctic is not brought into the Antarctic by the conduct mentioned in paragraph (1)(a); or

- (c) the person has a permit or a recognised foreign authority to bring in the micro-organism.
- (3) Subsection (1) does not apply in relation to the conduct mentioned in paragraph (1)(a) if the conduct was done in an emergency:
 - (a) to save a person from death or serious injury; or
 - (b) to secure the safety of a ship or aircraft or the safety of equipment or facilities of high value; or
 - (c) to protect the environment.

19AD Offences relating to bringing food into the Antarctic

Bringing live animals into the Antarctic as food

- (1) A person must not bring a live animal into the Antarctic for use as food.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

Controls to ensure organisms brought into Antarctic as food do not escape

- (2) If a person brings an organism into the Antarctic for use as food, the person must put controls in place that ensure that the organism does not escape into the Antarctic environment.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

Poultry and food products derived from poultry

- (3) A person commits an offence if:
 - (a) the person brings poultry or any other bird product that is to be used as food into the Antarctic; and
 - (b) the poultry or other bird product is contaminated with disease.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (4) Subsection (3) does not apply if the person has taken all reasonable precautions to ensure that disease is not brought into the Antarctic by the conduct mentioned in paragraph (3)(a).

19AE Offence relating to destruction of organisms brought into Antarctic without a permit

- (1) This section applies if:
- (a) a person brings into, or keeps in, the Antarctic an organism that is not indigenous to the Antarctic; and
 - (b) that conduct is not in accordance with a permit or recognised foreign authority (either because the person does not have one to do so or because the conduct cannot be authorised by a permit or recognised foreign authority); and
 - (c) the organism poses a risk to native fauna and flora.
- (2) The person must, as soon as is reasonably practicable after bringing the organism into the Antarctic or beginning to keep it, remove or destroy the organism and any progeny of the organism.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (3) Subsection (2) does not apply if:
- (a) it is not feasible to remove or destroy the organism or its progeny; or
 - (b) the removal or destruction of the organism or its progeny would result in a greater adverse environmental impact than not doing so; or
 - (c) the organism is brought into or kept in the Antarctic to be used as food.

- (4) The person must, as soon as is reasonably practicable after bringing the organism into the Antarctic or beginning to keep it, take all reasonable steps to avoid or, if already occurring, control the consequences of the conduct mentioned in paragraph (1)(a).

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (5) Subsection (4) does not apply if the organism is brought into or kept in the Antarctic to be used as food.

31 Paragraphs 29(2)(f) and (g)

Omit “animals, plants, viruses, bacteria, yeasts and fungi”, substitute “organisms”.

32 Schedule 3 (Annex II to the Protocol on Environmental Protection to the Antarctic Treaty)

Repeal the Annex, substitute:

ANNEX II TO THE PROTOCOL ON ENVIRONMENTAL PROTECTION TO THE ANTARCTIC TREATY

CONSERVATION OF ANTARCTIC FAUNA AND FLORA

ARTICLE 1

DEFINITIONS

For the purposes of this Annex:

- (a) “native mammal” means any member of any species belonging to the Class Mammalia, indigenous to the Antarctic Treaty area or occurring there naturally through migrations;
- (b) “native bird” means any member, at any stage of its life cycle (including eggs), of any species of the Class Aves indigenous to the Antarctic Treaty area or occurring there naturally through migrations;
- (c) “native plant” means any member of any species of terrestrial or freshwater vegetation, including bryophytes, lichens, fungi and algae, at any stage of its life cycle (including seeds, and other propagules), indigenous to the Antarctic Treaty area;
- (d) “native invertebrate” means any member of any species of terrestrial or freshwater invertebrate, at any stage of its life cycle, indigenous to the Antarctic Treaty area;
- (e) “appropriate authority” means any person or agency authorised by a Party to issue permits under this Annex;
- (f) “permit” means a formal permission in writing issued by an appropriate authority;
- (g) “take” or “taking” means to kill, injure, capture, handle or molest a native mammal or bird, or to remove or damage such quantities of native plants or invertebrates that their local distribution or abundance would be significantly affected;
- (h) “harmful interference” means:

- (i) flying or landing helicopters or other aircraft in a manner that disturbs concentrations of native birds or seals;
 - (ii) using vehicles or vessels, including hovercraft and small boats, in a manner that disturbs concentrations of native birds or seals;
 - (iii) using explosives or firearms in a manner that disturbs concentrations of native birds or seals;
 - (iv) wilfully disturbing breeding or moulting native birds or concentrations of native birds or seals by persons on foot;
 - (v) significantly damaging concentrations of native terrestrial plants by landing aircraft, driving vehicles, or walking on them, or by other means; and
 - (vi) any activity that results in the significant adverse modification of habitats of any species or population of native mammal, bird, plant or invertebrate.
- (i) “International Convention for the Regulation of Whaling” means the Convention done at Washington on 2 December 1946.
- (j) “Agreement on the Conservation of Albatrosses and Petrels” means the Agreement done at Canberra on 19 June 2001.

ARTICLE 2

CASES OF EMERGENCY

1. This Annex shall not apply in cases of emergency relating to the safety of human life or of ships, aircraft, or equipment and facilities of high value, or the protection of the environment.
2. Notice of activities undertaken in cases of emergency that result in any taking or harmful interference shall be circulated immediately to all Parties and to the Committee.

ARTICLE 3

PROTECTION OF NATIVE FAUNA AND FLORA

1. Taking or harmful interference shall be prohibited, except in accordance with a permit.

2. Such permits shall specify the authorised activity, including when, where and by whom it is to be conducted and shall be issued only in the following circumstances:
 - (a) to provide specimens for scientific study or scientific information;
 - (b) to provide specimens for museums, herbaria and botanical gardens, or other educational institutions or uses;
 - (c) to provide specimens for zoological gardens but, in respect of native mammals or birds, only if such specimens cannot be obtained from existing captive collections elsewhere, or if there is a compelling conservation requirement; and
 - (d) to provide for unavoidable consequences of scientific activities not otherwise authorised under sub-paragraphs (a), (b) or (c) above, or of the construction and operation of scientific support facilities.
3. The issue of such permits shall be limited so as to ensure that:
 - (a) no more native mammals, birds, plants or invertebrates are taken than are strictly necessary to meet the purposes set forth in paragraph 2 above;
 - (b) only small numbers of native mammals or birds are killed, and in no case more are killed from local populations than can, in combination with other permitted takings, normally be replaced by natural reproduction in the following season; and
 - (c) the diversity of species, as well as the habitats essential to their existence, and the balance of the ecological systems existing within the Antarctic Treaty area are maintained.
4. Any species of native mammals, birds, plants and invertebrates listed in Appendix A to this Annex shall be designated “Specially Protected Species”, and shall be accorded special protection by the Parties.
5. Designation of a species as a Specially Protected Species shall be undertaken according to agreed procedures and criteria adopted by the ATCM.
6. The Committee shall review and provide advice on the criteria for proposing native mammals, birds, plants or invertebrates for designation as a Specially Protected Species.

7. Any Party, the Committee, the Scientific Committee on Antarctic Research or the Commission for the Conservation of Antarctic Marine Living Resources may propose a species for designation as a Specially Protected Species by submitting a proposal with justification to the ATCM.
8. A permit shall not be issued to take a Specially Protected Species unless the taking:
 - (a) is for a compelling scientific purpose; and
 - (b) will not jeopardise the survival or recovery of that species or local population;
9. The use of lethal techniques on Specially Protected Species shall only be permitted where there is no suitable alternative technique.
10. Proposals for the designation of a species as a Specially Protected Species shall be forwarded to the Committee, the Scientific Committee on Antarctic Research and, for native mammals and birds, the Commission for the Conservation of Antarctic Marine Living Resources, and as appropriate, the Meeting of the Parties to the Agreement on the Conservation of Albatrosses and Petrels and other organisations. In formulating its advice to the ATCM on whether a species should be designated as a Specially Protected Species, the Committee shall take into account any comments provided by the Scientific Committee on Antarctic Research, and, for native mammals and birds, the Commission for the Conservation of Antarctic Marine Living Resources, and as appropriate, the Meeting of the Parties to the Agreement on the Conservation of Albatrosses and Petrels and other organisations.
11. All taking of native mammals and birds shall be done in the manner that involves the least degree of pain and suffering practicable.

ARTICLE 4

INTRODUCTION OF NON-NATIVE SPECIES AND DISEASES

1. No species of living organisms not native to the Antarctic Treaty area shall be introduced onto land or ice shelves, or into water, in the Antarctic Treaty area except in accordance with a permit.
2. Dogs shall not be introduced onto land, ice shelves or sea ice.

3. Permits under paragraph 1 above shall:
 - (a) be issued to allow the importation only of cultivated plants and their reproductive propagules for controlled use, and species of living organisms for controlled experimental use; and
 - (b) specify the species, numbers and, if appropriate, age and sex of the species to be introduced, along with a rationale, justifying the introduction and precautions to be taken to prevent escape or contact with fauna or flora.
4. Any species for which a permit has been issued in accordance with paragraphs 1 and 3 above shall, prior to expiration of the permit, be removed from the Antarctic Treaty area or be disposed of by incineration or equally effective means that eliminates risk to native fauna or flora. The permit shall specify this obligation.
5. Any species, including progeny, not native to the Antarctic Treaty area that is introduced into that area without a permit that has been issued in accordance with paragraph 1 and 3 above, shall be removed or disposed of whenever feasible, unless the removal or disposal would result in a greater adverse environmental impact. Such removal or disposal may include by incineration or by equally effective means, so as to be rendered sterile, unless it is determined that they pose no risk to native flora or fauna. In addition, all reasonable steps shall be taken to control the consequences of that introduction to avoid harm to native fauna or flora.
6. Nothing in this Article shall apply to the importation of food into the Antarctic Treaty area provided that no live animals are imported for this purpose and all plants and animal parts and products are kept under carefully controlled conditions and disposed of in accordance with Annex III to the Protocol.
7. Each Party shall require that precautions are taken to prevent the accidental introduction of micro-organisms (e.g., viruses, bacteria, yeasts, fungi) not present naturally in the Antarctic Treaty area.
8. No live poultry or other living birds shall be brought into the Antarctic Treaty area. All appropriate efforts shall be made to ensure that poultry or avian products imported into Antarctica are free from contamination by diseases (such as Newcastle's Disease, tuberculosis, and yeast infection) which might be harmful to native

flora and fauna. Any poultry or avian products not consumed shall be removed from the Antarctic Treaty area or disposed of by incineration or equivalent means that eliminates the risks of introduction of micro-organisms (e.g. viruses, bacteria, yeasts, fungi) to native flora and fauna.

9. The deliberate introduction of non-sterile soil into the Antarctic Treaty area is prohibited. Parties should, to the maximum extent practicable, ensure that non-sterile soil is not unintentionally imported into the Antarctic Treaty area.

ARTICLE 5

INFORMATION

Each Party shall make publicly available information on prohibited activities and Specially Protected Species to all those persons present in or intending to enter the Antarctic Treaty area with a view to ensuring that such persons understand and observe the provisions of this Annex.

ARTICLE 6

EXCHANGE OF INFORMATION

1. The Parties shall make arrangements for:
 - (a) collecting and annually exchanging records (including records of permits) and statistics concerning the numbers or quantities of each species of native mammal, bird, plant or invertebrate taken in the Antarctic Treaty area; and
 - (b) obtaining and exchanging information as to the status of native mammals, birds, plants, and invertebrates in the Antarctic Treaty area, and the extent to which any species or population needs protection.
2. As early as possible, after the end of each austral summer season, but in all cases before 1 October of each year, the Parties shall inform the other Parties as well as the Committee of any step taken pursuant to paragraph 1 above and of the number and nature of permits issued under this Annex in the preceding period of 1 April to 31 March.

ARTICLE 7

***RELATIONSHIP WITH OTHER AGREEMENTS OUTSIDE THE
ANTARCTIC TREATY SYSTEM***

Nothing in this Annex shall derogate from the rights and obligations of Parties under the International Convention for the Regulation of Whaling.

ARTICLE 8

REVIEW

The Parties shall keep under continuing review measures for the conservation of Antarctic fauna and flora, taking into account any recommendations from the Committee.

ARTICLE 9

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. Unless the measure 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 of the Antarctic Treaty Consultative Parties notifies the Depositary, within that time period, that it wishes an extension of that period or that it is unable to approve the measure.
2. Any amendment or modification of this Annex which becomes effective in accordance with paragraph 1 above shall thereafter become effective as to any other Party when notice of approval by it has been received by the Depositary.

APPENDICES TO THE ANNEX

APPENDIX A:

SPECIALLY PROTECTED SPECIES

Ommatophoca rossii, Ross Seal.

Part 2—Application and transitional

33 Application and transitional provisions

- (1) The amendments made by items 6 to 17 apply to permits issued on or after the commencement of this Schedule.
- (2) The amendments made by items 20, 21, 23, 24, 25, 26, 27, 28 and 29 apply to acts done on or after the commencement of this Schedule.
- (3) The amendment made by item 22 applies to acts done wholly on or after the commencement of this Schedule.
- (4) To avoid doubt:
 - (a) if an action is done in accordance with a permit or recognised foreign authority issued before the commencement of this Schedule, section 19 of the *Antarctic Treaty (Environment Protection) Act 1980* (whether as in force before or after the commencement of this Schedule) does not apply to that action; and
 - (b) if a permit issued before the commencement of this Schedule refers to the taking of a native invertebrate or a native plant, that term has a meaning unaffected by the amendment made by item 3 of this Schedule.
- (5) The amendment made by item 30 applies to:
 - (a) to the extent that the amendment relates to the insertion of section 19AC into the *Antarctic Treaty (Environment Protection) Act 1980*—bringing an organism or article into the Antarctic on or after the commencement of this Schedule; and
 - (b) to the extent that the amendment relates to the insertion of section 19AD into that Act—bringing an organism or bird product into the Antarctic on or after the commencement of this Schedule; and
 - (c) to the extent that the amendment relates to the insertion of section 19AE into that Act—any organism that is brought into, kept or continues to be kept in the Antarctic on or after the commencement of this Schedule.

Schedule 1 Implementation of amendments to Annex II of the Madrid Protocol
Part 2 Application and transitional

- (6) Despite the amendment made by item 31, regulations in force under section 29 of the *Antarctic Treaty (Environment Protection) Act 1980* immediately before the commencement of this Schedule continue in effect, on and after that commencement, as if they had been made under that section as in force after that commencement.
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[*Minister's second reading speech made in—
House of Representatives on 10 February 2010
Senate on 11 March 2010*]

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(30/10) *Antarctic Treaty (Environment Protection) Amendment Act 2010* No. 23, 2010