

Departmental Disclosure Statement

Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry for the Environment.

The Ministry for the Environment certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

28 March 2018.

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Part One: General Policy Statement

This Bill amends the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (the Act) to allow the Minister to recover from an applicant the actual and reasonable costs incurred in relation to a board of inquiry appointed under the Act to decide an application for marine consent.

The change will ensure that a process conferring a private benefit (the marine consent process for section 20 activities) results in a private, rather than a public, cost.

Costs incurred by the EPA in receiving, processing and deciding applications for marine consent under the Act are already cost-recoverable from the applicant. This Bill will align the board of inquiry process with those EPA processes. It will also align the Act with the Resource Management Act 1991, which allows the relevant Minister to recover from an applicant costs incurred in relation to a board of inquiry appointed under that Act.

The Bill sets out criteria that the Minister must have regard to when recovering costs, and requires the Minister to provide (upon request by an applicant) an estimate of the costs likely to be recovered.

The Bill also enables the Minister to delegate the cost recovery and provision of an estimate, if requested by an applicant, to the EPA. The costs of the Board of Inquiry are also deemed to a debt due to the Crown and are recoverable by the EPA in a court of competent jurisdiction.

The cost-recovery provision will not apply to a board of inquiry if the board of inquiry relates to an application that is made before the amendment comes into force, and has been deemed to be complete by the EPA.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	NO

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<i>Impact Summary: Cost recovery of Boards of Inquiry appointed under the EEZ Act, Ministry for the Environment, (March 2018)</i> A copy of the Regulatory Impact Summary is available on the Ministry for the Environment website at: http://www.mfe.govt.nz/ris/boi-cost-recovery	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
The Regulatory Impact Summary identified above did not meet the threshold for receiving an independent opinion on the quality of the RIS from the RIA Team based in the Treasury. The Summary was reviewed by the Ministry for the Environment's internal Regulatory Impact Assessment Panel.	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
A high-level estimate of costs and benefits is available at pages 7-8 of the Impact Summary at the link above.	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES
<i>The potential costs are likely to increase if the EPA has to recover debt owed by an applicant in court; however, this is unlikely to occur as user-pays system for the marine consent process have been in place since the EEZ Act in 2013. All applications that have been processed through the EEZ Act since its introduction in 2013 have been fully recovered from applicants. Further, cost recovery is supported by submissions received as part of the targeted consultation that was undertaken.</i>	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

No implications for New Zealand's international obligations were identified.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

The Ministry consulted with Te Puni Kokiri on policy documents. No negative implications for the rights and interests of Māori protected by the Treaty of Waitangi were identified.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

NO

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:

(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?

NO

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

NO

3.4.1. Was the Ministry of Justice consulted about these provisions?

NO

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?

NO

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
Brief targeted consultation on the policy proposal was undertaken February 8-13, 2018, with those stakeholders who might, in the future, require marine consents for publicly notifiable activities that are subject to a BOI process. Seven representatives from the petroleum and seabed-mining industries were contacted. Five submissions were received. All submitters supported the proposal to amend the Act to provide for the Minister to recover the costs incurred by a BOI appointed under the Act.	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
The Ministry for the Environment notes that the regime proposed in the Bill mirrors the cost-recovery approach employed that has been tested under the Resource Management Act 1991 (RMA) for Boards of Inquiry considering nationally significant proposals. This Bill will further align decision-making process between the EEZ Act and the RMA, as Cabinet intended when the EEZ Act was amended in 2017 as part of a broader reform of resource management legislation (Resource Legislation Amendment Act (RLAA)). A draft of the Bill has also been shared with the EPA.	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO

4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO