

Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Bill

Government Bill

Explanatory note

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 Environmental Protection Authority (the **EPA**) in receiving, processing, and deciding applications for marine consent under the Act are already 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 (if requested by an applicant) the provision of an estimate to the EPA. The costs of the board of inquiry are also deemed to be 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.

Departmental disclosure statement

The Ministry for the Environment is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2018&no=55>

Regulatory impact assessment

The Ministry for the Environment produced a regulatory impact assessment on 29 March 2018 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact assessment can be found at—

- <http://www.mfe.govt.nz/ris/boi-cost-recovery>
- <http://www.treasury.govt.nz/publications/informationreleases/ria>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 provides that the Bill comes into force on the day after the date on which it receives the Royal assent.

Clause 3 identifies the principal Act being amended by this Bill: the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012.

Clause 4 amends section 14 of the principal Act. Section 14 restricts the matters on which the Minister may give a direction to the Environmental Protection Authority. The amendment adds the exercise of any power, duty, or function under Part 3A of the principal Act as a restricted matter.

Clause 5 inserts *new section 52A* into the principal Act. *New section 52A* provides for the Minister to recover from an applicant costs incurred in relation to a board of inquiry appointed under section 52 or 99A of the principal Act. This aligns the principal Act with the Resource Management Act 1991, section 149ZD(4) of which allows the relevant Minister to recover from an applicant costs incurred in relation to a board of inquiry appointed under that Act.

Clause 6 repeals an obsolete cross-reference in section 99 of the principal Act to section 149Q of the Act (which related to draft board of inquiry reports). Section 149Q was repealed, on 19 April 2017, by section 92 of the Resource Legislation Amendment Act 2017.

Clause 7 inserts a *new Part 2* into Schedule 1 of the principal Act. *New Part 2* contains a transitional provision that states that *new section 52A* does not apply to a board of inquiry if the board of inquiry relates to an application that is made before the date on which *new section 52A* comes into force.

Hon David Parker

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act **2018**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

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3 Principal Act

This Act amends the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (the **principal Act**).

4 Section 14 amended (Restriction on ministerial direction to Environmental Protection Authority) 5

In section 14, replace “Parts 3 and 4” with “Parts 3, 3A, and 4”.

5 New section 52A inserted (Cost recovery for boards of inquiry)

After section 52, insert:

52A Cost recovery for boards of inquiry

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|---|----|
| (1) The Minister may recover from an applicant the actual and reasonable costs incurred in relation to a board of inquiry appointed under section 52 or 99A. | 10 |
| (2) The Minister must, upon request by an applicant, provide an estimate of the costs likely to be recovered under this section. | |
| (3) When recovering costs under this section, the Minister must have regard to the following criteria: | 15 |
| (a) the sole purpose is to recover the reasonable costs incurred in respect of the matter to which the costs relate: | |
| (b) the extent to which any activity by the applicant reduces the costs to the Minister in carrying out any of the Minister’s functions, powers, or duties. | 20 |
| (4) The costs referred to in subsection (1) are a debt due to the Crown that are recoverable by the EPA on behalf of the Crown in any court of competent jurisdiction. | |
| (5) The Minister may, in writing, delegate to the EPA his or her functions, powers, and duties under this section. | 25 |

6 Section 99 amended (Application for consent for nationally significant cross-boundary activity referred to board of inquiry)

Repeal section 99(5)(b).

7 Schedule 1 amended

In Schedule 1, after Part 1, insert the Part 2 set out in the **Schedule** of this Act. 30

Schedule
New Part 2 inserted into Schedule 1

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	Part 2	
	Provision relating to the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2018	5
3	Boards of inquiry in process before commencement of section 52A	
	Section 52A does not apply to a board of inquiry appointed in respect of an application for a section 20 activity if the application—	
	(a) was made before the date of commencement of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2018 ; and	10
	(b) complied with section 38.	