

Proposed EEZ Act Amendment Bill 2018: talking points for Cabinet meeting

- The BOI process for deciding marine consent applications is new to the EEZ Act. It was added in 2017, to better align decision-making processes under the EEZ Act with processes under the RMA. Cost-recovery provisions were not incorporated at the time. This was an oversight in the legislation amendments.
- If the EEZ Act is not amended to provide cost-recovery powers to the Minister for the Environment, the direct and indirect costs of BOIs that would usually be recoverable from the applicant will fall to the Crown.
- The EEZ Act adopts a user-pays system for marine consent applications. Applications are considered to be matters of private rather than public benefit and are therefore subject to full recovery of costs from the applicant.
- MfE and the EPA have assumed that BOI costs would be recoverable from the applicant and budgeted accordingly. The Bill does not seek to change an appropriation, but corrects an error to avoid future unintended costs.
- BOIs appointed by the Minister for the Environment decide applications for marine consent for publicly notified section 20 activities.
- The direct and indirect costs of a BOI are estimated to be up to 75 percent of the total cost of processing and deciding a marine consent for a notified section 20 activity. They will include, for example, remuneration, travel expenses, external legal and technical advice, and the cost of hearings.
- The other 25 percent of the cost of dealing with such an application will comprise EPA functions, such as the initial completeness assessment and notification. The EPA can recover these costs from the applicant under existing provisions.
- We don't know exactly how much applications will cost. For reference,—
 - the average cost recovered for a nationally significant proposal considered by a BOI under the RMA is \$1.66 million.
 - publicly notified oil and gas marine consent applications under the EEZ Act decided by a DMC appointed by the EPA have had recovered costs between \$450,000 and \$940,000.
 - publicly notified seabed mining applications under the EEZ Act decided by a DMC appointed by the EPA have averaged approximately \$2 million.
- The first application to use the EEZ BOI process has recently been lodged by Tamarind Resources. A BOI is being appointed and MfE is currently working through options to meet these costs (estimated to be up to \$660,000).
- In order to minimise the risk that further applications might be lodged before the amendment comes into effect, I have added the Bill to the list of urgent bills to be progressed through the House.
- Targeted consultation was undertaken with seven representatives from the oil and gas and seabed mining industries, as those parties who might require consents that will be subject to an EEZ BOI process. Four of five respondents supported cost recovery. One indicated no substantial comments in relation to the proposal. There were no objections to the proposed change.