



To Hon David Parker, Minister for the Environment			Tracking #: 2017-B-04105
<u>Security Level</u>	In-confidence	Number of Attachments	1 letter 2 draft Cabinet papers
Date Submitted:	20 December 2017	Response needed by:	23 January 2018
MfE Priority:	Non-Urgent	Action Sought:	Decision

Legal: 2018 Environment Legislation Bids

Key Messages

1. This paper seeks your agreement to submit two legislative bids for inclusion in the 2018 Legislative Programme.
2. The proposed bid requests in order of priority are:
 - Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Bill – category 2 (must be passed in the year); and
out of scope
3. Attached for your approval is a draft covering letter and draft papers to the Legislation Coordinator in the Cabinet Office.
4. You are required to submit bids for the Legislation Programme 2018 to the Legislation Coordinator in the Cabinet Office by 10am on Friday 26 January 2018 (as requested in the Cabinet Office circular CO (17) 11). Bids must be submitted with a covering letter that ranks all bids in each portfolio.

Recommendations

5. We recommend that you:
 - **agree** that the following bids in the Environment portfolio be submitted for inclusion in the 2018 Legislative Programme, ranked in the following order of priority:
 - i. Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Bill – category 2 (must be passed in the year)

out of scope

Yes/No

- **sign** the attached letter to the Cabinet Office requesting the above bills be awarded a place in the 2018 Legislation Programme

Yes/No

- **submit** the letter and Cabinet papers for the bills within the Environment portfolio to the Cabinet Office by 10am on Friday 26 January 2018.

Yes/No

Signature



Jane Strachan
 Director
 Directorate: Legal



Hon David Parker
 Minister for the Environment

Date 15/1/18

Ministry for the Environment contacts

Position	Name	Cell phone	1 st contact
Principal author	s9(2)(a)	s9(2)(a)	✓
Responsible Manager	Alice King	0220441189	
Director	Jane Strachan	0272437486	

Released under the provisions of the Official Information Act

Legal: 2018 Environment Legislation Bids

Supporting material

Context

1. Cabinet Office circular CO (17) 11 sets out the requirements for the preparation of requests ('bids') from Ministers for bills to be awarded places on the 2018 Legislation Programme.
2. Ministers are asked to arrange for bids for the 2018 Legislation Programme to be delivered to the Legislation Coordinator in the Cabinet Office by 10am on Friday, 26 January 2018.
3. A standard format for each bid is set out in the annex to the Cabinet Office circular. Each bid must be authorised by the Minister, or in the case of multiple bids, attached under a covering letter authorised by the Minister. Where a Minister is submitting more than one bid in a portfolio, the bids must be provided under a covering letter authorised by the Minister that ranks all bids in that portfolio.
4. The priorities given to bills for a calendar year are as follows:
 - Category 1: must be passed or introduced in the year as a matter of law
 - Category 2: must be passed in the year
 - Category 3: to be passed if possible in the year
 - Category 4: to be passed under extended sitting hours
 - Category 5: to be referred to a select committee in the year
 - Category 6: instructions to be provided to PCO in the year
 - Category 7: on hold
 - Category 8: not to proceed.
5. These bids are compiled by the Legislation Co-ordinator in the Cabinet Office, and submitted to the Cabinet Legislation Committee (LEG) for a decision on which bills are to be included in the Legislation Programme, and the priority that they will be given
6. A place on the annual Legislation Programme must be sought for the following matters:
 - every bill that is currently before the House or a select committee;
 - bills that are currently undergoing policy development work, or are being drafted, and have a place on the previous (2017) Legislation Programme or in the 100 Day Plan;
 - policy proposals that may result in a bill in 2018 (including bills likely to be proposed in Law Commission reports).
7. A Cabinet paper for each bill in the Environment portfolio, its proposed ranking within the portfolio and a covering letter to the Cabinet Office is included in this briefing. Each bill and its proposed priority is summarised below.

Analysis and Advice

8. To give effect to the Government's priorities the Ministry proposes that you request the following bills be awarded a place on the 2018 Legislation Programme. The bills in order of priority are:

- Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Bill – category 2 (must be passed in the year); and

out of scope

9. A Cabinet paper for each bill in the Environment portfolio, its proposed ranking within the portfolio and a covering letter to the Cabinet Office is included in this briefing. Each bill and its proposed priority is summarised below.

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

10. The Minister requires statutory authority to recover from an applicant the costs associated with a Board of Inquiry appointed to process and determine a publicly notified marine consent application for a section 20 activity under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act (the EEZ Act).

11. The EEZ Act was amended in the past year. Part of the amendment was to include the Board of Inquiry process to determine a publicly notified marine consent application for a section 20 activity. The ability for the Minister to recover the costs of the Board of Inquiry was inadvertently omitted from the recent amendments.

12. We propose the Bill be given Category 2 priority (must be passed in the year) to ensure that the costs of a Board of Inquiry considering a section 20 marine consent application can be recovered from the applicant. This will ensure continuity of the Environmental Protection Authority cost recovery model and also ensure that the cost does not ultimately fall to taxpayers.

out of scope

Consultation and Collaboration

21. Parliamentary Counsel Office have reviewed the draft bids for the above bills and advise that in respect of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Bill, the timeframes are short and if more complex amendments are required, more time will be required.

Risks and mitigations

22. If the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Bill is not passed promptly, the Minister will not be able to recover the costs associated with a Board of Inquiry appointed to process and determine a section 20 publically notified marine consent application.

Legal issues

23. There are no legal issues associated with the submission of the attached legislative bids for inclusion on the 2018 Legislation Programme.

Financial, regulatory and legislative implications

24. No financial, regulatory or legislative sensitivities or implications have been identified in respect of the submission of the attached legislative bids for inclusion on the 2018 Legislation Programme.

Next Steps

25. Once you have determined the bills to request be included in the 2018 Legislation Programme, you must submit your requests for each portfolio. The requests must be submitted in the form of the attached letter and Cabinet papers for each bill, to the Cabinet Office by 10.00am on Friday, 26 January 2018.
26. Two hard copies of each bid must be provided to the Legislation Coordinator in the Cabinet Office. In addition, an electronic version of each bid must be emailed to the Legislation Coordinator (gerrard.carter@dpmc.govt.nz).

Released under the provisions of the
Official Information Act

Released under the provisions of the
Official Information Act

Cabinet Office
Level 10
Executive Wing
PARLIAMENT BUILDINGS


Attention: Legislation Coordinator

2018 Legislation Programme: Submission of Bids for the Environment Portfolio

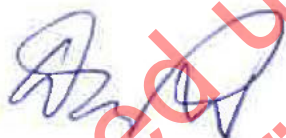
As requested in the Cabinet Office Circular CO (17) 11, I wish to submit the following bids, in order of rank within the Environment portfolio, for consideration for inclusion in the 2018 Legislation Programme:

- a) Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Bill – category 2 (must be passed in the year); and

out of scope



Yours sincerely



Hon David Parker
Minister for the Environment

Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Bill: Request for Priority in the 2018 Legislation Programme

Summary Information

1. Details regarding the bid for the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Bill:
 - 1.1. **Portfolio of sponsoring Minister:** Minister for the Environment
 - 1.2. **Department responsible:** Ministry for the Environment
 - 1.3. **Departmental contact for clarification for further information:**

Name:	Natalie Pike
Phone:	022 076 3818
Email:	natalie.pike@mfe.govt.nz
 - 1.4. **Title of proposed Bill:** Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Bill
 - 1.5. **Proposed ranking of Bill within the bids from this portfolio:** 1 of 2
 - 1.6. **Estimated number of clauses in the Bill:** Small – 2 clauses
 - 1.7. **Complexity of clauses:** Low
 - 1.8. **Proposed priority:** Category 2 (must be passed in the year)

Policy

2. The proposed Bill will enable the Minister for the Environment to recover the costs of a Board of Inquiry appointed to process and determine a section 20 publicly notified marine consent application.
3. It represents an alignment of policy and will not be contentious.

Need for legislation

4. The Minister requires statutory authority to recover from an applicant the costs associated with a Board of Inquiry.
5. It is essential this is passed in early 2018 to ensure that the costs of a Board of Inquiry considering an application for a section 20 marine consent can be recovered from the applicant. This will ensure continuity of the Environmental Protection Authority cost recovery model and also ensure that the cost does not ultimately fall to taxpayers.
6. The Act was amended in the past year. Part of the amendment was to include the Board of Inquiry process to determine publicly notified marine consent applications for section 20 activities. The ability for the Minister to recover the costs of the Board of Inquiry was inadvertently omitted from the recent amendments.

Compliance

7. The proposed Bill will comply with:

- 7.1. the principles of the Treaty of Waitangi;
- 7.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
- 7.3. the principles and guidelines set out in the Privacy Act 1993;
- 7.4. relevant international standards and obligations; and
- 7.5. the *LAC Guidelines: Guidelines on Process and Content of Legislation*.

Binding on the Crown

8. The implications for government departments of the potential amendments binding the Crown will be minimal as the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 already binds the Crown and no changes are proposed in this regard.

Consultation

9. No consultation on the Bill has taken place to date.
10. MBIE and the EPA will be consulted on the development of this Bill.
11. Targeted consultation will be carried out with seabed mining, oil and gas industry stakeholders known to operate in the Exclusive Economic Zone and continental shelf.
12. Consultation is expected to be completed by mid-February 2018.
13. We are recommending that this Bill is progressed through the House stages under urgency and is not referred to Select Committee as it is essential the Bill is passed promptly and is a non-contentious alignment of legislation with policy.
14. The Bill will not be required to be referred to the Legislation Design and Advisory Committee for advice due to the minor and administrative nature of the Bill.
15. An exposure draft of the Bill will not be released for consultation before the Bill is introduced.

Associated regulations

16. No regulations will likely be needed to give effect to the provisions in the Bill.

Timeline

17. I propose the following timing for the legislation:

<i>Step</i>	<i>Proposed date</i>	<i>Consistency assurance</i>

Date on which final policy approvals will be obtained from Cabinet.	Late February 2018	A short targeted consultation with known oil and gas operators in the exclusive economic zone and continental shelf will be undertaken prior to final policy approvals.
Date on which final drafting instructions will be sent to the Parliamentary Counsel Office.	Late February 2018 (as soon as policy is approved by Cabinet)	This amendment is minor (2 clauses maximum) and simple. Officials will be able to discuss the required amendment with PCO in January/February 2018 prior to drafting instructions being sent to PCO.
Date by which the Bill will be provided to the Ministry of Justice for an assessment of consistency with the New Zealand Bill of Rights Act 1990.	No later than mid-March	
Dates on which the Bill will be before LEG and Cabinet for approval for introduction.	Mid to late March	PCO have advised this is a very short time frame that is dependent on the amendments being minor and simple. If more complex amendments are required, more time will be needed
Date requested for introduction of the Bill.	Late March	
Date of report back from select committee.	We are recommending that this Bill is progressed through the House stages under urgency and is not referred to Select Committee.	
Date of enactment.	Late March 2018	
Date of commencement.	Late March 2018	

Recommendations

18. The Minister for the Environment recommends that the committee:

- 18.1. **note** that the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Bill 2018 will provide the Minister for the Environment the ability to recover from the applicant, costs associated with Board of Inquiry processing and determination of publicly notifiable marine consent applications for section 20 activities. This will ensure that the cost recovery model operated by the EPA under the EEZ Act applies equally to costs incurred by Board of Inquiry appointed by the Minister for the Environment as it does to the EPA when processing all other marine consent applications;
- 18.2. **approve** the inclusion of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Bill 2018 in the 2018 Legislation Programme, with a priority category 2, as it must be passed in early 2018 in order that the Minister has the ability to recover from the applicant costs incurred by Boards of Inquiry
- 18.3. **note** that drafting instructions will be provided to the Parliamentary Counsel Office by late February 2018;
- 18.4. **note** that the Bill should be introduced no later than mid to late March 2018;
- 18.5. **note** that the Bill should be passed no later than late March 2018.

Authorised for lodgement



Hon David Parker
Minister for the Environment

15/01/18

Released under the provisions of the Official Information Act

Released under the provisions of the
Official Information Act