

7 June 2018

Hon David Parker  
Minister for the Environment  
Parliament  
Wellington

By email: [d.parker@ministers.govt.nz](mailto:d.parker@ministers.govt.nz)

Dear Minister

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

As you will be aware, the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Bill was referred to the Environment Select Committee on 8 May with a truncated report back date of 11 June 2018, which precluded public input into the committee's consideration of the bill. However, the Law Society was invited to write directly to the committee, and did so on 6 June 2018. Unfortunately, by that time the committee had reported back.

The Law Society has identified technical issues relating to cost recovery mechanisms for marine consent applications, and has recommended amendments to the bill to address these. A copy of our comments on the bill is enclosed for your consideration. We would be grateful if you would consider making amendments to the bill by way of supplementary order paper, if time permits.

If further discussion would assist, the Law Society's Environmental Law Committee would be happy to engage with your officials. Contact can be made in the first instance through the Law Society's Law Reform Manager, Vicky Stanbridge ([vicky.stanbridge@lawsociety.org.nz/04 463 2912](mailto:vicky.stanbridge@lawsociety.org.nz/04_463_2912)).

We look forward to hearing from you.

Yours sincerely,



Andrew Logan  
Vice-President

Encl: NZLS submission on the bill, 6 June 2018



Beach Energy Limited  
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13 February 2018

Att: Glenn Wigley, Director – Marine, Environmental Risk and Science

Ministry for the Environment  
PO Box 10362  
Wellington, New Zealand 6143

Dear Glenn

**Re: Consultation – Cost Recovery for Board of Inquiry under the EEZ Act**

Thank you for your request to provide feedback on the proposed amendments to the *Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012*. Lattice Energy owned by Beach Energy from 1 February, supports a cost recovery in all jurisdictions in which we operate.

In order to provide adequate feedback, Beach Energy seeks further information and clarification on the proposed cost recovery model. This information will also assist Beach Energy to understand the potential implications to its future business plans. Information in the form of a full cost structure and worked examples based on historical applications would be most beneficial.

Yours sincerely,

**Scott Cornish**

HSE, Operations Authority and Community Manager  
Beach Energy

**From:** Chris Castle  
**To:** [EEZ Regulations](#)  
**Subject:** Proposed amendments to the EEZ Act  
**Date:** Wednesday, 14 February 2018 11:51:08 AM

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Dear Sir/Madam,

We have been asked to provide feedback on the proposed amendments to the EEZ Act. Our only comment is that the amendments appear to be an entirely logical fix and we support their adoption.

Regards,

**Chris Castle**

**Chief Executive Officer**

**Chatham Rock Phosphate Limited**

**Email: [chris@crpl.co.nz](mailto:chris@crpl.co.nz)**

**Cell: +64 21 558 185**

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**[www.rockphosphate.co.nz](http://www.rockphosphate.co.nz)**



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Ref: EN-NZ/GS/002808

13 February 2018

VIA EMAIL



Glenn Wigley  
Director – Marine, Environmental Risk & Science  
Ministry for the Environment  
PO Box 10362  
Wellington 6143

OMV Upstream

Dear Mr Wigley

Gabriel Selischi  
Managing Director

**Proposed amendments to the EEZ Act for Board of Inquiry cost recovery**

Thank you for your letter dated 8 February in relation to the above.

Tel. +64 4 910 2500  
Fax +64 4 910 2504

We are grateful for having the opportunity to comment on the proposed amendments to the EEZ Act. We have reviewed the proposed amendments and we have no substantial comments to submit in relation to this.

OMV New Zealand Ltd  
Level 20, Majestic Centre  
100 Willis Street  
PO Box 2621  
Wellington, New Zealand

However, we see this as a good opportunity to draw your attention to the issue that the industry is facing in relation to regulation 16(1) for notified consent for offshore processing drainage during exploration. Unintended consequences of the drafting of this regulation has resulted in the creation of a significant burden for industry when forced to make notified applications for deck drainage while all other exploration related activities are non-notified.

Registered Office:  
Level 20, Majestic Centre  
100 Willis Street  
Wellington, New Zealand

[www.omv.com](http://www.omv.com)

We understand that PEPANZ will be making a more substantial and detailed submission on this point in due course and, therefore, we will not elaborate on the issues here.

We thank you again for the invitation to give feedback.

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'Selischi'.

Gabriel Selischi  
Managing Director

13 February 2018

Attention Glenn Wigley, Director – Marine, Environmental Risk and Science  
Ministry for the Environment  
Wellington

[EEZRegulations@mfe.govt.nz](mailto:EEZRegulations@mfe.govt.nz)

## PEPANZ Submission: Proposed amendments to the EEZ Act for Board of Inquiry cost recovery

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### Introduction

This document constitutes the Petroleum Exploration and Production Association of New Zealand's (PEPANZ) submission in respect of the proposed amendments to the EEZ Act for Board of Inquiry cost recovery, which was circulated by the Ministry for the Environment for comment on 8 February 2018. PEPANZ represents private sector companies holding petroleum exploration and mining permits, service companies and individuals working in the industry.

### Summary

- PEPANZ accepts the Ministry's proposal to enable cost recovery for Board of Inquiry processes, given the original policy intent appears to have been for such cost recovery.
- PEPANZ recommends that the equivalent RMA provisions to object to costs should also be included.
- PEPANZ submits that it is efficient to use this Cabinet process to amend Regulation 16 of the *Exclusive Economic Zone and Continental Shelf (Environmental Effects—Discharge and Dumping) Regulations 2015* to reclassify offshore processing drainage as a non-notified discretionary activity. The current discretionary classification appears not to have been the original policy intent and its continuation imposes significant and unwarranted costs on operators and the regulator.

### Comments

#### Introduction

PEPANZ welcomes the opportunity to provide feedback but expresses concern at the timeframe of three business days.

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## The proposals in the consultation document

PEPANZ accepts the proposal from the Ministry for the Environment, which is to provide cost-recovery powers to the Minister in relation to Boards of Inquiry processes under the EEZ Act. We support this because cost-recovery was anticipated when the Amendment Act was brought into force in April 2017, and the inability to charge and recover costs does not appear to align with the Government's policy intent.

This issue is important to the Crown because of the high cost of consent applications, and the implications for Crown finances. As an industry, we too are acutely aware of the high cost of consent applications, and share your desire to quickly resolve issues which may add unintended costs. We therefore understand the urgency with which this proposal is being progressed.

The Ministry's letter did not specify the comparable section of the Resource Management Act 1991 that the cost-recovery provision would be based on, but we assume it is Section 149ZD "Costs of processes under this Part recoverable from applicant". To provide a fair process, we submit that a section comparable to s357B of the RMA be considered for inclusion, to provide a "Right of objection in relation to imposition of additional charges or recovery of costs."

Given the very short timeframe for providing feedback on this proposal, we have not had the opportunity to assess whether the existing cost recovery regime in ss143-147 of the EEZ Act could more easily and appropriately be adapted to Board of Inquiry cost recovery than introducing the RMA's Board of Inquiry cost recovery regime.

## An analogous issue for the offshore oil and gas sector

If this issue is of financial concern to the Crown, a current analogous issue for the offshore oil and gas sector is one caused by a specific regulation. In terms of significant and unwarranted costs being imposed on parties (including the regulator), we take this opportunity to again draw attention to the issue with Regulation 16 of the *Exclusive Economic Zone and Continental Shelf (Environmental Effects—Discharge and Dumping) Regulations 2015*.

We seek, as a matter of urgency, an amendment to Regulation 16, to reclassify the discharge of offshore processing drainage from *discretionary* to *non-notified discretionary* to restore what we understand to be the original policy intent. The tests set out in Section 29D of the EEZ Act can be demonstrated – the discharge "has a low probability of significant adverse effects on the environment or existing interests," and is "routine or exploratory in nature".

### *Issues with Regulation 16 being applied to exploration activities*

It is clear from the consultation in 2014 on the Discharge and Dumping regulations that the offshore processing drainage regulation was only meant to relate to production activities<sup>1</sup>. In addition, the supporting information that accompanied the relevant exposure draft<sup>2</sup> covers offshore processing drainage under the subject of "Discharges from petroleum extraction" and states "*Ministry for the Environment officials received advice that these discharges do not occur during the exploration phase of operations.*"

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<sup>1</sup> "Offshore processing drainage: water from hazardous or non-hazardous deck drains but does not include the oily waste from machinery spaces. Offshore processing drainage is oil that seeps or leaks from pipe work and machinery used to **process the oil from the reservoir**" (emphasis added, noting that oil is not processed during exploration), which can be found on page 17 of the initial discussion document at: <http://www.mfe.govt.nz/sites/default/files/activity-classification-under-the-eez-act.pdf>

<sup>2</sup> See page 22, <https://www.mfe.govt.nz/sites/default/files/supporting-information-exposure-draft-discharge-dumping-eez-feb14.pdf>

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However, the Environmental Protection Authority, in relation to Shell Taranaki Limited's marine consent application of 2017, determined that exploration activities do involve the discharge of offshore processing drainage. We understand the EPA has confirmed it takes this view of "offshore processing drainage" and will apply this in future. We accept the discretion of the EPA to interpret the law as it currently stands, but the current law does not give effect to what we understand to be the original policy intent.

As a *discretionary* discharge, this means full public notification is required for this one aspect of exploration activity that has otherwise been carefully classified as non-notified discretionary. The discretionary classification effectively overrides the general non-notified approach for this activity and will likely cause difficulties for the EPA when administering applications for exploration in the future in terms of potentially multiple consent processes for the same exploration activity.

### Process going forward

PEPANZ asks that the Ministry proceed to resolve this issue as soon as possible. Given the Minister intends to take a policy paper to Cabinet to amend the EEZ Act to enable cost recovery for Board of Inquiry processes, we consider it to be efficient at the same time to also seek Cabinet approval to resolve this issue.

We note the likely obligation on the Minister to consult with the public under s32 of the EEZ Act when changing an activity status. We further ask that this consultation be conducted with some urgency given the imminent lodging of exploration consent applications that will be affected by this issue with Regulation 16.

**From:** [Gemma Couzens](#)  
**To:** [EEZ Regulations](#)  
**Subject:** FW: Proposed amendment to the EEZ Act  
**Date:** Tuesday, 13 February 2018 8:54:33 AM  
**Attachments:** [image005.jpg](#)  
[image006.png](#)  
[image007.png](#)  
[image008.png](#)  
[image009.png](#)

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**From:** Jason Peacock [<mailto:jason.peacock@tamarindresources.com>]  
**Sent:** Tuesday, 13 February 2018 8:51 a.m.  
**To:** Gemma Couzens  
**Subject:** RE: Proposed amendment to the EEZ Act  
Gemma

Thanks for the attached letter outlining the proposed amendment. As discussed with you yesterday, Tamarind agree that for a nationally significant proposal and one that is being considered by a BOI, it is appropriate that costs are recovered from the application and that this burden should not be one met by the general tax payer.

My only comment to this would be that the costs incurred by the applicant, as a result of the BOI, should be entirely reasonable and not excessive. I would also suggest that given the commercial nature of this process, that the applicant would expect that the process is managed with appropriate efficiency and urgency that would be expected from a commercial agreement of this type.

Regards

Jason

**Jason Peacock**

*Country Manager NZ*



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Worley Parsons House | Level 8, 33 Gill Street | New Plymouth 4342 | New Zealand

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**From:** Gemma Couzens [<mailto:Gemma.Couzens@mfe.govt.nz>]

**Sent:** Thursday, 8 February 2018 3:37 PM

**To:** 'jason.peacock@tamarindresources.com'

**Subject:** Proposed amendment to the EEZ Act

Dear Mr Peacock,

Please find attached a letter seeking your feedback on a proposal to amend the EEZ Act. The proposed amendment would provide for the recovery of costs associated with Boards of Inquiry appointed to decide publicly notified marine consent applications for activities restricted under section 20 of the Act.

Please provide any feedback to [EEZRegulations@mfe.govt.nz](mailto:EEZRegulations@mfe.govt.nz) by **12 pm on 13 February 2018**.

Kind regards,

**Gemma Couzens – Senior Analyst, Mana Moana (Marine team), Moana Tahora (Offshore)**  
Ministry for the Environment – Manatu Mo Te Taiao

Mobile: +64 (0)22 5173323 Email: [gemma.couzens@mfe.govt.nz](mailto:gemma.couzens@mfe.govt.nz) Website: [www.mfe.govt.nz](http://www.mfe.govt.nz)

23 Kate Sheppard Place, Thorndon, Wellington 6143

MfE\_logo



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6 June 2018

Ms Deborah Russell  
Chair, Environment Committee  
Parliament Buildings  
Wellington

By email: [en@parliament.govt.nz](mailto:en@parliament.govt.nz)

Dear Ms Russell

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

**1. Introduction**

- 1.1 The New Zealand Law Society understands the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Bill (Bill) is currently being considered by the Environment Committee.
- 1.2 As your committee will be aware, the Bill was introduced on 3 May, had its first reading on 8 May and, after the first reading, a motion was passed that the normal select committee process (which includes public consultation) be truncated and the Bill reported back to the House by 11 June.<sup>1</sup> The committee staff have however indicated that the Law Society is welcome to write to the committee, and we appreciate the opportunity to make the following comments on the Bill.

**2. Overview**

- 2.1. The Bill amends the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (Act) to allow cost recovery in relation to a Board of Inquiry (BOI) appointed under the Act to decide a marine consent application. The explanatory note to the Bill states that this will align BOI cost recovery with Environmental Protection Authority (EPA) cost recovery processes under the Act, as well as with BOI cost recovery processes under the Resource Management Act 1991 (RMA).
- 2.2. The Law Society notes, however, that the proposed new BOI cost recovery provision (new section 52A) differs from that set out in both the Act and the RMA, and that there is a lack of clarity within the Bill, and lack of alignment between, the Bill, the Act and RMA cost regimes. The Law Society considers a greater degree of alignment is appropriate and provides the following comments and recommendations.

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<sup>1</sup> On the grounds that the amendment is considered to be a minor technical correction of a drafting error in the Resource Legislation Amendment Act (which came into force in early 2017).

### **3. Lack of clarity around cost recovery provisions to apply**

- 3.1. Proposed section 52A, in clause 5 of the Bill, sets out what BOI costs can be recovered, that an applicant can request an estimate of costs, the criteria the Minister is to consider when recovering costs, that costs are a debt due to the Crown, and that the Minister can delegate his or her functions, powers and duties under this section to the EPA.
- 3.2. Proposed section 52A appears intended to be a standalone BOI costs provision such that the other cost recovery provisions in sections 143 to 147 of the Act will not apply. However, that is not completely clear, given sections 143 to 147 address cost recovery matters that proposed section 52A does not.<sup>2</sup> It also includes different criteria relating to the degree of public benefit, which is discussed further at [4.1] – [4.4] below.
- 3.3. It is also noted that proposed section 52A only deals with costs incurred in relation to a BOI; it does not explicitly address whether the EPA's costs associated with any BOI process (or the costs of any other participant for that matter) can also be recovered. But the implication is that what may be recovered is the Minister's costs in relation to a BOI, particularly if this provision is contrasted with the parallel provision in the RMA.<sup>3</sup>
- 3.4. If the intention is to align the BOI and EPA cost recovery processes and enable the recovery of both BOI and EPA costs under the new section, proposed section 52A should be amended to clarify that the existing cost recovery provisions in sections 143 to 147 of the Act apply except to the extent that they have been amended by proposed section 52A. An alternative approach would be to delete proposed section 52A and instead amend the relevant parts of sections 143 to 147 of the Act to confirm that these also apply to BOI costs currently borne by the Minister.

### **4. Cost recovery criteria**

- 4.1. While the cost recovery regimes under the Bill and the RMA both include criteria relating to the purpose of cost recovery and the extent to which any activity by the applicant reduces the costs to the Minister,<sup>4</sup> the RMA also requires that regard be had to one additional criterion: that the applicant should be required to pay for costs only to the extent that the benefit of the actions by the Minister are obtained by the applicant as distinct from the community as a whole.<sup>5</sup>
- 4.2. The rationale for not including this additional criterion in proposed section 52A is not clear. However, the explanatory note to the Bill states that “a process conferring a private benefit (the marine consent process for section 20 activities) results in a private, rather than a public, cost”. This appears to imply that *all* section 20 marine consent applications involve private as opposed to public benefits. While many marine consent applications may be made primarily or even solely for private benefit, there will be instances when an application confers a greater or lesser degree

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<sup>2</sup> Such as charges only applying to the extent Parliament has not appropriated money for those purposes, charges relating to a financial year, that charges may be prescribed by regulation etc.

<sup>3</sup> Section 149ZD of the RMA makes express provision for recovery of local authority and EPA costs associated with the BOI process as well as BOI costs.

<sup>4</sup> Refer proposed section 52A(3) of the Bill and section 149ZD(6)(a) and (c) of the RMA.

<sup>5</sup> Refer section 149ZD(6)(b).

of public benefit or may even primarily be for public benefit. An example of the latter could be the submarine pipelines which contain telecommunication cables.

- 4.3. Further, as referenced briefly above, under the existing EPA cost recovery provisions in the Act the Minister is required to consider who benefits (applicant, public etc) from the performance of a function or service.<sup>6</sup>
- 4.4. Given that both the existing EPA and RMA cost recovery provisions require consideration of the extent of any public benefit, it would be more consistent and appropriate if the Minister in seeking to recover BOI costs was required also to have regard to the degree of public benefit (if any) associated with the application.
- 4.5. In the absence of such a change, the applicable cost recovery criteria would depend on whether a BOI was appointed to hear an application, rather than any specific features of the application itself. For cross-boundary (EEZ/RMA) activities this is particularly problematic, as the criteria applying to BOI cost recovery within coastal waters (under the RMA) and those applying outside coastal waters (under the Act) would not align. Further, as a BOI is only appointed to hear cross-boundary applications which are of national significance, it seems contradictory not to then consider the public benefit of such applications in cost recovery decisions.

## 5. Objections process

- 5.1. At present, and unlike the RMA,<sup>7</sup> there is no formal objections process enabling applicants to object to cost recovery assessments under the Act. While the Bill does not currently address the issue, the Law Society considers it would be useful if it did.
- 5.2. This is because the determination of costs involves matters of discretion (associated with the cost recovery criteria) as to what is reasonable, how the actions of an applicant has impacted costs, and (for EPA costs at least) the extent of benefit gained by the applicant and the public.
- 5.3. In the absence of any costs objection process, an applicant's only avenue to challenge costs is to seek a judicial review of the costs decision, such as occurred in the *Chatham Rock* case.<sup>8</sup> Judicial review actions are generally limited to challenges to the process followed (rather than a review of the overall merits) and can be expensive and time consuming for all parties involved (including the EPA and the Crown). Generally, only a portion of the costs associated with taking or defending such actions are recoverable.<sup>9</sup>
- 5.4. For these reasons, the Law Society considers that provision of an objection process within the Act itself would provide a more efficient and cost-effective avenue for cost decisions to be reviewed. An objections process could be based on a process similar to that followed under the RMA.<sup>10</sup>

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<sup>6</sup> Refer section 143(3)(a).

<sup>7</sup> Refer sections 357B to 358 of the RMA.

<sup>8</sup> *Chatham Rock Phosphate Ltd v Environmental Protection Authority* [2017] NZHC 3076.

<sup>9</sup> Scale costs apply in the High Court.

<sup>10</sup> Refer sections 357C to 358 of the RMA.

## 6. Recommendations

6.1. The Law Society recommends the following changes be made to the Bill:

- a) Amend proposed section 52A to:
  - i. clarify that the existing cost recovery provisions in sections 143 to 147 of the Act apply except to the extent that they have been amended by proposed section 52A; and
  - ii. add an additional criterion requiring the Minister to have regard to the degree of public benefit (if any) associated with the application.
- b) In the alternative, delete proposed section 52A and amend sections 143 to 147 of the Act to confirm that these sections also apply to BOI costs.
- c) Include new provisions which set out a process enabling BOI and EPA cost objections to be made, heard and determined under the Act. Any objections process could be based on a process similar to that followed under the RMA.

We hope the committee finds these comments helpful. If you have any questions please do not hesitate to contact us through the Law Society's Law Reform Manager, Vicky Stanbridge [vicky.stanbridge@lawsociety.org.nz](mailto:vicky.stanbridge@lawsociety.org.nz) / 04 463 2912.

Yours sincerely

A handwritten signature in black ink, consisting of a large, stylized loop followed by a long horizontal stroke extending to the right.

Andrew Logan  
**Vice-President**

**From:** s9(2)(a)  
**To:** [Joe Beaglehole \(Parliament\)](#)  
**Cc:** [Lou Hunt](#); s9(2)(a); [John Robertson](#); [Penny Race \(Parliament\)](#)  
**Subject:** RE: Briefing on transitional provisions for EEZ BOI cost recovery  
**Date:** Wednesday, 21 February 2018 3:56:57 PM

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Hi Joe,

Sorry I should have made clear that we will absolutely be providing different options for progressing this including a full process and some possibilities for a faster process.

Thanks – I will build in one week for coalition partner consultation.

Thanks,

s9(2)(a)

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**From:** Joe Beaglehole [mailto:Joe.Beaglehole@parliament.govt.nz]  
**Sent:** Wednesday, 21 February 2018 3:53 p.m.  
**To:** s9(2)(a)  
**Cc:** [Lou Hunt](#); s9(2)(a); [John Robertson](#); [Penny Race \(Parliament\)](#)  
**Subject:** RE: Briefing on transitional provisions for EEZ BOI cost recovery

Hi s9(2)(a)

Given Parker and Sage have already discussed this and concluded they preferred the longer process, regardless of cost, it would be great if you could frame this advice in a way that doesn't sound like we are ignoring them, i.e. perhaps by giving them an option of going for the process they have agreed on, as well as the faster process.

On consultation, we can shorten that to a week, given the issue has already been discussed with Minister Sage, and it is uncontroversial.

I've had a call from the Leader of the House's office, so they are aware of the Bill. I haven't seen the leg programme yet though.

Joe

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**From:** s9(2)(a) [mailto:s9(2)(a)@mfe.govt.nz]  
**Sent:** Wednesday, 21 February 2018 3:00 PM  
**To:** Joe Beaglehole <[Joe.Beaglehole@parliament.govt.nz](mailto:Joe.Beaglehole@parliament.govt.nz)>  
**Cc:** [Lou Hunt](#) <[Lou.Hunt@mfe.govt.nz](mailto:Lou.Hunt@mfe.govt.nz)>; s9(2)(a); [redacted]; [John Robertson](#) <[John.Robertson@mfe.govt.nz](mailto:John.Robertson@mfe.govt.nz)>  
**Subject:** Briefing on transitional provisions for EEZ BOI cost recovery

Hi Joe,

Please be advised that we have just received Crown Law advice regarding the application of transitional provisions for the EEZ amendment for cost recovery of Boards of Inquiry.

We are intending to provide the Minister with a briefing summarising this advice and seeking direction for the process and timeframe for introducing a Bill into the House. We will still be recommending that the process is progressed as soon as possible to minimise the costs that might fall to the taxpayer. Therefore we will be re-testing whether the Minister wants to go to Select Committee and ENV committee and will clarify that, in any case, we will go to LEG committee to approve introduction into the House.

We will get this to the Minister on Friday / Monday and will need a quick decision, if possible, to enable us to update the policy in the draft Cabinet paper and re-consult (if necessary).

I note that we are expected to provide 2 weeks for consultation with coalition partners. Could you please clarify what we need to do to enable this and whether it is appropriate for us to seek a shorter timeframe in our briefing to the Minister?

Also, do you know whether time has been allocated in the House yet for the Bill?

Thanks,

**s9(2)(a)**

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**From:** Lou Hunt  
**Sent:** Wednesday, 14 February 2018 2:22 p.m.  
**To:** Joe Beaglehole (Parliament); Glenn Wigley  
**Cc:** Penny Race (Parliament); John Robertson  
**Subject:** RE: Notes from EEZ cost recovery catch up with Ministers Parker and Sage

Thanks Joe

As per our discussion this morning we will send over a BN acknowledging your line below that the Bill should go to select committee, but we will recommend it DOESN'T go (noting attached BN signed by Minister Parker in Dec D that the Bill progress without referral to Select Committee). We'll note the risks with extending the timeframe out to select committee and recommend to not go retrospective. I'll call you tomorrow on timing as PCO want CLO advice

Cheers  
Lou

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**From:** Joe Beaglehole [<mailto:Joe.Beaglehole@parliament.govt.nz>]  
**Sent:** Wednesday, 14 February 2018 1:40 p.m.  
**To:** Lou Hunt; Glenn Wigley  
**Cc:** Penny Race (Parliament)  
**Subject:** Notes from EEZ cost recovery catch up with Ministers Parker and Sage

Hi both

Just so you and Glenn have my notes from the meeting yesterday.

Minister Parker was of the view that:

- The process proposed by Glenn (taking a paper directly to Cabinet) was too fast
- That it wasn't worth taking this approach
- That the Bill should go to select committee
- That we shouldn't have a shorted select committee process, but should rely on the committee getting it back to us early
- That the Crown would wear these costs as that was the law currently
- That we should consider a transitional provision that would allow us to cover costs for applicants immediately once the law is passed, even if applications have been submitted already but not processed in their entirety

As discussed, given the Minister agreed to a faster process in the last briefing, happy for you to retest this. Perhaps you could frame this in the context of the transitional provision not being an option.

Thanks

Joe

**Joe Beaglehole**

Private Secretary (Environment)

Office of Hon David Parker

Parliament Buildings Wellington New Zealand

Phone s 9(2)(a) Mobile s 9(2)(a)

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Released under the provisions of the Official Information Act

**From:** Joe Beaglehole (Parliament)  
**To:** s9(2)(a)  
**Cc:** s9(2)(a)  
**Subject:** RE: Consultation on Cabinet paper - EEZ Amendment to enable cost recovery for Boards of Inquiry  
**Date:** Monday, 23 April 2018 1:51:31 PM

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OK thanks – nothing has emerged yet, other than no comments from Minister Sage.

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**From:** s9(2)(a) [redacted]@mfe.govt.nz]  
**Sent:** Monday, 23 April 2018 1:39 PM  
**To:** Joe Beaglehole <Joe.Beaglehole@parliament.govt.nz>  
**Cc:** s9(2)(a) [redacted]@mfe.govt.nz>  
**Subject:** RE: Consultation on Cabinet paper - EEZ Amendment to enable cost recovery for Boards of Inquiry

Hi Joe,

[redacted]  
[redacted]  
[redacted] – have you received anything yet?

Thanks,  
s9(2)(a) [redacted]

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**From:** Joe Beaglehole [<mailto:Joe.Beaglehole@parliament.govt.nz>]  
**Sent:** Friday, 13 April 2018 2:42 p.m.  
**To:** Penny Race (Parliament); Kayla Kingdon-Bebb; Vanessa Head; Andrew Hill; Peter Mee; Kelly Dunn; Alastair Cameron  
**Subject:** Consultation on Cabinet paper - EEZ Amendment to enable cost recovery for Boards of Inquiry

Dear all

Please see attached a draft Cabinet paper for consultation with your Ministers.

The paper proposes to correct an error that was made when the EEZ Act was amended in 2017 that means costs incurred by a Board of Inquiry appointed by the Minister for the Environment cannot be recovered from the applicant.

The Minister for the Environment intends to take this paper directly to Cabinet on 30 April, so I'd welcome any comment from your Ministers by Wednesday 25 April.

Thanks

Joe

**Joe Beaglehole**

Private Secretary (Environment)

Office of Hon David Parker

Parliament Buildings Wellington New Zealand

Phone s 9(2)(a) Mobile s 9(2)(a)

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**From:** s9(2)(a)  
**To:** [Joe Beaglehole \(Parliament\)](mailto:Joe.Beaglehole@parliament.govt.nz)  
**Subject:** RE: EEZ Cab paper  
**Date:** Tuesday, 13 March 2018 5:02:13 PM

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Hi Joe,

The EPA think the next BOI marine consent application is likely to be for Chatham Rock Phosphate towards the end of the year but they can't be 100% sure of timing – could be earlier or later.

Hope that helps.

Thanks,

s9(2)(a)

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**From:** Joe Beaglehole [mailto:Joe.Beaglehole@parliament.govt.nz]  
**Sent:** Tuesday, 13 March 2018 1:31 p.m.  
**To:** s9(2)(a)  
**Subject:** RE: EEZ Cab paper

Yes – best guess would be great thanks

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**From:** s9(2)(a) [mailto:s9(2)(a)@mfe.govt.nz]  
**Sent:** Tuesday, 13 March 2018 12:58 PM  
**To:** Joe Beaglehole <[Joe.Beaglehole@parliament.govt.nz](mailto:Joe.Beaglehole@parliament.govt.nz)>  
**Subject:** RE: EEZ Cab paper

Hi Joe,

I think the formatting looks ok on the electronic version attached – but let me know if something isn't right.

No but I can check with the EPA. They were keen that the briefing emphasis the risk that another application is submitted before the amendment is in force but haven't said when they think another could be submitted. I can ask for their best guess if that's useful?

Thanks,

s9(2)(a)

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**From:** Joe Beaglehole [mailto:Joe.Beaglehole@parliament.govt.nz]  
**Sent:** Tuesday, 13 March 2018 12:54 p.m.  
**To:** s9(2)(a)  
**Subject:** EEZ Cab paper

Hi s9(2)(a)

Is there any reason why the EEZ BOI Cab paper has strange formatting towards the end? Want to

send an electronic version through?

Also – do we know what the chances are of receiving another application soon?

Thanks

Joe

**Joe Beaglehole**

Private Secretary (Environment)

Office of Hon David Parker

Parliament Buildings Wellington New Zealand

Phone s 9(2)(a) Mobile s 9(2)(a)

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**From:** Joe Beaglehole (Parliament)  
**To:** [Brian Hallinan](#); [Martin Workman \(Parliament\)](#)  
**Cc:** s9(2)(a)  
**Subject:** RE: EEZ paper direct to Cabinet  
**Date:** Monday, 12 February 2018 10:25:21 AM  
**Attachments:** [image001.png](#)

---

Hi Brian

Given MfE's regular officials meeting was cancelled today, I suggest we raise this with the Minister at his regular catchup with Minister Sage tomorrow at 3.30pm.

Note – he is likely to want to include cost control principles in the amendment.

Thanks  
Joe

---

**From:** Brian Hallinan [mailto:[Brian.Hallinan@mfe.govt.nz](mailto:Brian.Hallinan@mfe.govt.nz)]  
**Sent:** Friday, 9 February 2018 1:01 PM  
**To:** Joe Beaglehole <[Joe.Beaglehole@parliament.govt.nz](mailto:Joe.Beaglehole@parliament.govt.nz)> Martin Workman <[Martin.Workman@parliament.govt.nz](mailto:Martin.Workman@parliament.govt.nz)>  
**Cc:** s9(2)(a) <[REDACTED]@mfe.govt.nz>; s9(2)(a) <[REDACTED]@mfe.govt.nz>; s9(2)(a) <[REDACTED]@mfe.govt.nz>  
**Subject:** EEZ paper direct to Cabinet

Hi Martin and Joe

As mentioned yesterday, we're going to advise that the Minister submits the EEZ Board of Inquiry cost recovery paper direct to Cabinet (i.e. not going to either ENV on policy or LEG on the bill), so the legislation can be in place before the first likely application (which was meant to be in April but we now understand will be in early March).

Our proposed timeline is:

Cabinet approval of policy proposal	19 Feb 2018
Cabinet approval of draft Bill	26 Feb 2018
Recommended introduction into House	27 Feb 2018 or as soon as possible thereafter

Penny will talk to this at the Minister's meeting on Monday.

Can one of you please give me a call on 022 066 8420 so we can talk about the logistics around this, in terms of what you need to support conversations around the Cabinet Office and Leader of the House?

Thanks

Brian

**Brian Hallinan – Manager, Environmental Risk and Innovation**  
Ministry for the Environment – Manatu Mo Te Taiao

Mobile: 022 066 8420 Email: [brian.hallinan@mfe.govt.nz](mailto:brian.hallinan@mfe.govt.nz) Website: [www.mfe.govt.nz](http://www.mfe.govt.nz)  
Environment House, 23 Kate Sheppard Place, PO Box 10362, Wellington 6143



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**From:** Lou Hunt  
**To:** [Joe Beaglehole \(Parliament\)](#); [Martin Workman \(Parliament\)](#)  
**Cc:** [Glenn Wigley](#)  
**Subject:** RE: Recommendation to amend EEZ Act to enable cost recovery  
**Date:** Tuesday, 30 January 2018 9:33:23 AM

---

Hi Martin

Please share the BN with Minister Hipkins. Given the urgency of this amendment, we will undertake targeted consultation as soon as we receive the signed briefing but are unlikely to be able to lodge a Cabinet paper until the 15 Feb. This means targeted consultation until approximately 9 Feb which allows us a few days to undertake agency consultation on the Cab paper and lodge it with the Cabinet office by 15 Feb, which has us on the option 1 timeframe in the BN.

In terms of costs the BOI is an independent decision maker appointed by the Minister and while the EPA provide administrative and secretarial support, we are unclear as to what degree they can control the costs of a BOI process. However, we will discuss with the EPA and the RMA team. Note also that the CRP process (as referred to by Joe below) was run under the 'old process' with the EPA-appointed Decision-making Committee as the decision-maker not a BOI.

Thanks  
Lou

---

**From:** Glenn Wigley  
**Sent:** Tuesday, 30 January 2018 8:51 a.m.  
**To:** Joe Beaglehole (Parliament); Lou Hunt  
**Cc:** Martin Workman (Parliament)  
**Subject:** RE: Recommendation to amend EEZ Act to enable cost recovery

Hi Joe

I see no problem in sharing with Minister Hipkins.

Thanks for passing on timely feedback on path forward

I suspect that the last point is unable to be done through this amendment. But we will look into it.

**Glenn Wigley – Director, Marine, Environmental Risk and Science**

Ministry for the Environment – Manatu Mo Te Taiao

Mob: 027 491 7806 Website: [www.mfe.govt.nz](http://www.mfe.govt.nz)

23 Kate Sheppard Place, PO Box 10362, Wellington 6143



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**From:** Joe Beaglehole [<mailto:Joe.Beaglehole@parliament.govt.nz>]

**Sent:** Tuesday, 30 January 2018 8:42 a.m.  
**To:** Glenn Wigley  
**Cc:** Martin Workman (Parliament)  
**Subject:** Recommendation to amend EEZ Act to enable cost recovery

Hi Glenn

The Minister had a text from Minister Hipkins asking about the proposed cost recovery amendment to the EEZ Act.

I guess Minister Hipkins has heard about this from officials wanting this on the legislative programme? He was after more information about the proposal. Perhaps we could refer him the briefing?

The Minister said he had signed off the briefing you sent up, but wanted to ensure:

- Targeted consultation
- That there was a way of controlling costs (he mentioned these inquiries get out of hand and referenced chatham rock phosphate).

Thanks

Joe

**Joe Beaglehole**

Private Secretary (Environment)  
Office of Hon David Parker  
Parliament Buildings Wellington New Zealand  
Phone s 9(2)(a) Mobile s 9(2)(a)

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**From:** Joe Beaglehole (Parliament)  
**To:** s9(2)(a) John Robertson; Lou Hunt  
**Cc:** Ministerials; Martin Workman (Parliament)  
**Subject:** Signed BOI cost recovery briefing and Cab paper  
**Date:** Tuesday, 20 March 2018 12:11:56 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[20032018115556-0001.pdf](#)

---

Signed briefing attached.

Note the Minister's comments on cost recovery "My concern is that there needs to be a duty upon those incurring the costs not to have excessive costs. How could we achieve that? .

Are you guys able to follow up on that issue, perhaps via a briefing, given we haven't been able to allay the Ministers concerns to date?

Are you also able to get an updated Cab paper and RIS to me for consultation?

Thanks  
Joe

Thanks  
Joe

---

**From:** s9(2)(a) [redacted]@mf.govt.nz]  
**Sent:** Tuesday, 20 March 2018 10:47 AM  
**To:** Joe Beaglehole <Joe.Beaglehole@parliament.govt.nz>  
**Subject:** Feedback on EEZ BOI briefing

Hi Joe,

I just wanted to check in as to whether the Minister has looked at the briefing paper on the EEZ BOI cost recovery?

I understand from PCO that the Bill has been added to the list of urgent bills in the House so they are able to begin drafting.

Thanks,

s9(2)(a) [redacted] **Mana Moana (Marine team), Moana Tahora (Offshore)**  
Ministry for the Environment – Manatu Mo Te Taiao  
Email: s9(2)(a) [redacted]@mfe.govt.nz Website: [www.mfe.govt.nz](http://www.mfe.govt.nz)  
23 Kate Sheppard Place, Thorndon, Wellington 6143



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**From:** s9(2)(a)  
**To:** [Joe Beaglehole \(Parliament\)](#); s9(2)(a); [John Robertson](#)  
**Cc:** [Penny Race \(Parliament\)](#)  
**Subject:** RE: Signed EEZ amendment briefing  
**Date:** Tuesday, 6 March 2018 12:09:39 PM

---

Hi Joe,

Yes noted – we hadn't expected the Minister to choose an expedited timeframe if not choosing a retrospective option but I think there is still merit in progressing as soon as possible in case another application gets lodged or in case Tamarind's application is delayed or withdrawn. I expect this is what the Minister is considering.

We set out the actions for an expedited timeframe in para 15 so will progress on that basis and reflect this in the Cab paper.

Yes we will have a draft RIS but no QA statement by Friday.

Thanks,

s9(2)(a)

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**From:** Joe Beaglehole [mailto:[Joe.Beaglehole@parliament.govt.nz](mailto:Joe.Beaglehole@parliament.govt.nz)]  
**Sent:** Tuesday, 6 March 2018 12:02 p.m.  
**To:** s9(2)(a); [John Robertson](#)  
**Cc:** Penny Race (Parliament)  
**Subject:** RE: Signed EEZ amendment briefing

Hi s9(2)(a)

Unfortunately the briefing recs weren't clear on the details of an expedited timeframe.

Is it worth the rush if it is impossible to have the change in place before the application?

I suggest you draft the Cab paper in a way that makes sense based on the input we have.

Could you provide a draft RIS on Friday?

Thanks  
Joe

---

**From:** s9(2)(a) <[s9\(2\)\(a\)@mfe.govt.nz](mailto:s9(2)(a)@mfe.govt.nz)>  
**Sent:** Tuesday, 6 March 2018 11:50 AM  
**To:** Joe Beaglehole <[Joe.Beaglehole@parliament.govt.nz](mailto:Joe.Beaglehole@parliament.govt.nz)>; s9(2)(a) <[s9\(2\)\(a\)@mfe.govt.nz](mailto:s9(2)(a)@mfe.govt.nz)>; John Robertson <[John.Robertson@mfe.govt.nz](mailto:John.Robertson@mfe.govt.nz)>  
**Cc:** Penny Race <[Penny.Race@parliament.govt.nz](mailto:Penny.Race@parliament.govt.nz)>  
**Subject:** RE: Signed EEZ amendment briefing

Hi Joe,

Thanks for this - I appreciate the expediency in giving us some direction.

Just to clarify the Minister's decision as I know he had concerns previously about shortening the process, his preferred option is to:

- Progress the amendment **without retrospective legislation** on an expedited timeframe which means **going to Cabinet once** for both policy approvals and approval to introduce the Bill into the House and **without going to ENV or LEG committee?**

I think we should be able to get a Cab paper to the office by Friday but the RIS may not have been reviewed and signed-off. Is it possible to provide the RIS next week before the paper gets lodged if need we can't meet this Friday?

Thanks,

s9(2)(a)

-----Original Message-----

From: Joe Beaglehole [<mailto:Joe.Beaglehole@parliament.govt.nz>]

Sent: Tuesday, 6 March 2018 11:32 a.m.

To: s9(2)(a); John Robertson; s9(2)(a)

Cc: Penny Race (Parliament)

Subject: Signed EEZ amendment briefing

Signed briefing attached.

Would be great if you could get a Cab paper to the office by this Friday, as the Minister is only around on Monday next week.

Thanks

Joe

-----Original Message-----

From: Joe Beaglehole

Sent: Tuesday, 6 March 2018 11:23 AM

To: Joe Beaglehole <[Joe.Beaglehole@parliament.govt.nz](mailto:Joe.Beaglehole@parliament.govt.nz)>

Subject: Scan Data from Fuji\_MFD\_350809

Sent by: beaglehj [[Joe.Beaglehole@parliament.govt.nz](mailto:Joe.Beaglehole@parliament.govt.nz)]

Number of Images: 18

Attachment File Type: PDF

Device Name: Fuji\_MFD\_350809

Device Location: EW 4.1R - [MFD]

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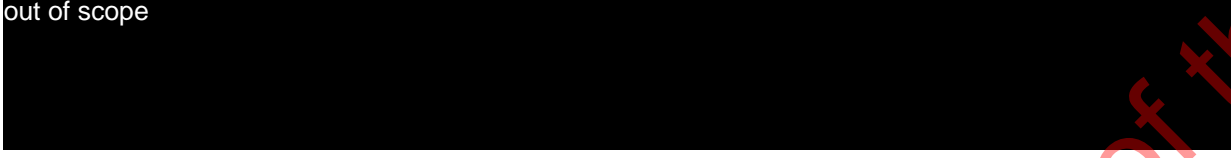
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**From:** Joe Beaglehole (Parliament)  
**To:** [Glenn Wigley](#); [Penny Nelson](#); [Lou Hunt](#); [Ministerials](#)  
**Subject:** Signed EPA letter of expectations briefing  
**Date:** Thursday, 8 February 2018 8:37:33 AM  
**Attachments:** [08022018082225-0001.pdf](#)

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out of scope

A large black rectangular redaction box covering the main body of the email.

Glenn/Lou - are you able to let me know what you guys are thinking regarding all these cost control requests including for the EEZ cost recovery changes?

Thanks  
Joe

out of scope

A large black rectangular redaction box covering the main body of the email.

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**From:** Joe Beaglehole  
**To:** s9(2)(a)  
**Cc:** s9(2)(a) (Parliament)  
**Subject:** FW: UPDATE Consultation: Cabinet paper - EEZ Amendment to enable cost recovery for Boards of Inquiry  
**Date:** Tuesday, 24 April 2018 10:34:39 AM

---

Hi both

See feedback from NZ first.

Thanks  
Joe

---

**From:** Kirsty Christison <[Kirsty.Christison@parliament.govt.nz](mailto:Kirsty.Christison@parliament.govt.nz)>  
**Date:** Monday, 23 Apr 2018, 21:37  
**To:** Corin Higgs <[Corin.Higgs@parliament.govt.nz](mailto:Corin.Higgs@parliament.govt.nz)>  
**Cc:** Jon Johansson <[Jon.Johansson@parliament.govt.nz](mailto:Jon.Johansson@parliament.govt.nz)>, Thomas Raethel <[Thomas.Raethel@parliament.govt.nz](mailto:Thomas.Raethel@parliament.govt.nz)>  
**Subject:** UPDATE Consultation: Cabinet paper - EEZ Amendment to enable cost recovery for Boards of Inquiry

Morning Corin

I was able to review this paper alongside Jenny Marcroft, our Environment Spokesperson, last night.

Her comment: relatively substantial oversight!

It's a fix we absolutely need to do so she is happy for this paper to proceed directly to Cabinet as planned by your Minister.

Cheers  
Kirsty

Kirsty Christison | Ministerial Advisor | Rt Hon Winston Peters | Deputy Prime Minister | Leader  
New Zealand First | Minister of Foreign Affairs | Minister for State Owned Enterprises |  
Minister for Racing | DDI: s 9(2)(a) | [kirsty.christison@parliament.govt.nz](mailto:kirsty.christison@parliament.govt.nz) | 7.4  
Executive Wing, Parliament Buildings, 6160 Wellington | [www.beehive.govt.nz](http://www.beehive.govt.nz)

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**From:** Corin Higgs  
**Sent:** Monday, 16 April 2018 11:56 AM  
**To:** Kirsty Christison <[Kirsty.Christison@parliament.govt.nz](mailto:Kirsty.Christison@parliament.govt.nz)>  
**Subject:** Consultation: Cabinet paper - EEZ Amendment to enable cost recovery for Boards of Inquiry

Hi

Please see attached a draft Cabinet paper for party consultation.

The paper proposes to correct an error that was made when the EEZ Act was amended in 2017 that means costs incurred by a Board of Inquiry appointed by the Minister for the Environment cannot be recovered from the applicant.

The Minister for the Environment intends to take this paper directly to Cabinet on 30 April, so I'd welcome any comment by the morning of Thursday 26 April.

Regards

Corin

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