



Resource Legislation Amendments 2017

RESOURCE LEGISLATION AMENDMENTS 2017 – FACT SHEET 13

Changes to public notices, electronic servicing and submission strike out

This is part of a series of 16 fact sheets that give an overview of recent resource legislation amendments.

This fact sheet outlines changes to the Resource Management Act 1991 (RMA) to:

- reduce the size and cost of issuing public notices
- make electronic delivery the default method of serving documents
- introduce additional discretionary criteria for striking out submissions.

These changes come into force on 18 October 2017.

Public notices must be published online, with summaries in newspapers

Decision-makers often need to notify the public of opportunities to take part in various processes under the RMA (such as notified resource consent applications and plan changes). These notifications are given through public notices.

Previously when giving public notice under the RMA, decision-makers:

- were required to publish a notice in a newspaper circulating the entire area likely to be affected by the proposal
- had the option to publish the notice on the internet as well.

Printing full public notices in newspapers is expensive, and over time the way members of the public receive information has shifted more towards the internet rather than newspapers.

The RMA has been amended to introduce new section 2AB, which requires:

- public notices to be published (along with all the relevant information) on a *freely accessible internet site* instead of a newspaper
- a short summary of the online notice to be published in at least one newspaper circulated in the whole area affected by the topic of the notice, along with a web address directing readers to the full notice.

There is no minimum length of time that public notices must remain on a website. A general guideline is that notices should be available online for at least the entire period that the notice is relevant to the public (for example, the submission period it relates to). Some councils may choose to store public notices online after this period for reference purposes.

The requirement for decision-makers to *serve* public notices to particular people has not changed.

The changes do not apply to public notices regarding proposals for national direction under the RMA, or public notices under other Acts, which have separate notification requirements.

The intent of this change is to:

- help the public to be involved in RMA processes
- reduce the costs of publishing public notices.

Public notices and summaries must be clear and concise

Previously there was no direction in the RMA about how decision-makers should write public notices. Notices were sometimes longwinded, and contain too much technical language to adequately inform a ‘general public’ audience.

The RMA has been amended to insert section 2AB(2), which requires any public notice on the internet, and any short summary in a newspaper, to be worded in a way that is clear and concise. This mirrors the new wording requirements for RMA plans and policy statements under new section 18A (see Fact Sheet 2 for more information about this).

Notices must still comply with any relevant form in the Resource Management (Forms, Fees and Procedure) Regulations 2003.

The intent of this change is to improve readability, to make it clear to the intended audience what the matter relates to and why they may want to get involved.

Documents must be served to electronic addresses provided, unless requested otherwise

Previously the use of email was an optional method to serve documents and provide other information for particular processes under the RMA. There was no mandate to use an electronic address as the default address for service, meaning people had full discretion to use more expensive and time-consuming methods, such as post.

Section 352 of the RMA has been amended to make electronic delivery the default method of service for RMA processes. If a person provides an electronic address, and does not request another method of service listed in section 352(1)(b), documents under the RMA must be served using the electronic address provided (unless a court directs otherwise).

An ‘electronic address’ could include email, websites, instant messaging, SMS ‘text’ messages and online messaging services. No definition of ‘electronic address’ is included in the RMA, so potentially future electronic communication methods may also apply.

If a person provides multiple electronic addresses (for example, an email address and a mobile number that has SMS capability), but does not specify a preference, the sender may decide which address to use, or may send material to multiple addresses.

If a person does not provide an electronic address or requests a non-electronic method of service and provides an address to do so, the sender may use any of the alternative methods listed in section 352(1)(b).

People are not required to provide an electronic address as their address for service, however this is encouraged as it is faster and less expensive than non-electronic methods.

The intent of this change is to ensure servicing of documents under the RMA is efficient, and confirms existing best practice among councils.

Submissions may be struck out for new reasons

Previously decision-makers conducting hearings had the discretion to strike out any submissions (or any part of a submission) before, or at a hearing if it:

- was frivolous or vexatious
- disclosed no reasonable or relevant case
- would be an abuse of the hearing process to allow the submission (or part) to be taken further.

The RMA has been amended to introduce new section 41D, which carries over the discretionary strikeout provisions listed above (although submissions can now be struck after a hearing, as well as before, or at a hearing), and also allows decision-makers to strike out a submission (or part) that:

- contains offensive language
- is supported only by evidence that, though purporting to be independent expert evidence, has been prepared by a person who is not independent or who does not have sufficient specialised knowledge or skill to give expert evidence on the matter.

A decision-maker may choose not to strike out a submission containing offensive language, depending on the context.

The change relating to independence means that if a person presents material in support of a submission and purports it to be independent expert evidence, that person should be able to demonstrate why this is the case. Expertise and skill may be demonstrated by detailing the author's experience, qualifications or membership of professional organisations. Independence may be demonstrated by codes of ethics, declaring any actual or potential conflicts of interest, or articulating the extent of their involvement in the proposal or related proposals.

This change does not mean that all submissions have to be supported by independent expert evidence in order to be considered valid by decision-makers. Submitters can still comment on any aspect of a proposal that they wish.

If a submission is struck out, the submitter can make an objection under section 357 of the RMA, but cannot subsequently appeal to the Environment Court against that objection decision (but only for submissions in respect of resource consents, reviews and change of conditions). See Fact Sheet 14 for information about changes to objections and Environment Court processes.

The intent of these changes are to ensure expert evidence presented can be considered robust, and to ensure submissions are not offensive, without compromising access to natural justice for submitters.

Fact sheets in this series

This is one of a series of 16 fact sheets providing an overview of amendments to the:

- Resource Management Act 1991
- Conservation Act 1987

- Reserves Act 1977
- Public Works Act 1981
- Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012.

The full set of fact sheets is available on our website:

www.mfe.govt.nz/publications/rma/resource-legislation-amendments-2017-fact-sheet-series

Find out more

Contact the Ministry for the Environment by emailing info@mfe.govt.nz, or visit www.mfe.govt.nz/rma.

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