

RESOURCE LEGISLATION AMENDMENTS 2017 – FACT SHEET 15

Changes to the board of inquiry process

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

This fact sheet outlines amendments to board of inquiry processes that are administered by the Environmental Protection Authority (EPA).

These changes come into effect immediately for all new RMA applications. The previous process continues to apply to any applications that were lodged before the changes to the Resource Management Act 1991 (RMA) came into effect.

The changes to the EEZ Act outlined below come into effect from 1 June 2017.

Flexible board of inquiry composition

Previously only a current, former or retired Environment Court Judge, or a retired High Court Judge, could be appointed as chair of a board of inquiry for a nationally significant proposal under the RMA. They are paid at the same rate as if they were sitting in a Court, which is significantly higher than allowed for the other board members.

The 'Making Good Decisions' accreditation programme has increased the number of hearing commissioners who are not current, former or retired judges, but may still be suitably qualified and experienced to act as chair of a board of inquiry under certain circumstances, such as deciding on less complex applications.

The RMA has been amended to:

- make appointing a judge as chair of a board of inquiry optional, rather than mandatory, allowing other candidates to be appointed as chair if appropriate
- enable members of the EPA board to nominate people, or be appointed themselves, as members of a board of inquiry
- enable the Minister(s) appointing the board to set terms of reference about administrative matters
- require the Minister(s) appointing a board of inquiry to consider the need for the board to have:
 - legal expertise
 - experience in managing cross examination
 - relevant technical expertise.

The intent of these changes is to decrease the cost of board of inquiry processes, while ensuring boards of inquiry retain appropriate expertise to make robust decisions on nationally significant proposals.

Timely and cost-effective operation

Previously boards of inquiry operated with relative autonomy, similar to a Court setting, with no explicit directive to minimise administrative costs.

The RMA has been amended to require boards of inquiry to:

- carry out their duties in a timely and cost-effective manner
- have regard to forecast budgets
- conduct administrative matters in accordance with any terms of reference set by the Minister.

The intent of these changes is to reduce the cost of board of inquiry processes.

Changes to notification, submission and decision steps

Previously the board of inquiry process had a number of steps prescribed, and written notification provisions, which added costs to the overall process.

The RMA has been amended to:

- require notices from the EPA to include an electronic address for sending submissions or further submissions (depending on the type of notice)
- clarify that if a person specifies an electronic address for service and does not request the EPA to send them physical information, then the electronic address for service will be used throughout the board of inquiry process
- extend the submission period from 20 to 30 working days
- remove the requirement for a draft decision report from the board of inquiry.

The intent of these changes is to improve the efficiency of board of inquiry processes.

New functions for EPA in processes

Previously it was unclear whether the EPA had a legislative mandate to provide planning advice to a board of inquiry under the RMA. This meant that if a board wanted planning advice that was independent from the applicant, submitters or council, it was often sought externally even though the EPA has planning capability.

Additionally, the EPA had no legislative mandate to make decisions on administrative matters that were incidental to the conduct of the inquiry, such as fixing the place and venue of a hearing. This meant that these decisions were often made by the board, which added cost and reduced the time boards had to consider on substantial matters of the inquiry.

The RMA has been amended to:

- clarify that the EPA is able to provide planning advice, if the board requests it
- enable the EPA to make decisions on administrative matters that are incidental to the conduct of an inquiry, rather than the board making those decisions.

Boards are still able to seek planning advice externally (rather than from the EPA). In making a decision to seek planning advice externally rather than from the EPA, however, any board should consider its responsibility to carry out duties in a timely and cost-effective manner.

The intent of this change is to reduce the time and cost of board of inquiry processes.

Suspending processes to recover costs

Previously the RMA did not allow a board of inquiry process to be suspended if the applicant stopped paying for the process, which could create problems with recovering the costs of an inquiry.

The RMA has been amended to allow the EPA to suspend a board of inquiry process to recover any outstanding debts from the applicant related to the inquiry (including any incurred from pre-lodgement activities).

The intent of this change is to facilitate the recovery of costs to the Crown generated through board of inquiry processes.

Alignment of some EEZ Act decision-making with RMA

Previously all marine consents required under section 20 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act) were heard and determined by the EPA.

The EEZ Act has been amended so that from 1 June 2017 (subject to the application of relevant transitional provisions), notified marine consent decisions for activities restricted under section 20 of the EEZ Act will be processed using a similar board of inquiry process to that under the RMA.

The following types of applications will continue to be decided by the EPA:

- applications for discharge and dumping activities
- non-notified applications.

The intent of this change is to align decision-making for certain marine consents with nationally significant proposals under the RMA. This will allow the EPA to make efficiency gains by standardising business processes for applications under both Acts.

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 or www.mfe.govt.nz/marine

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