

1 May 2015

ECan Review
Ministry for the Environment
PO Box 10362
Wellington 6143

Environment Canterbury Review

Introduction

1. The New Zealand Law Society (Law Society) welcomes the opportunity to comment on the proposals contained in *“Environment Canterbury Review: A discussion document, March 2015”* (discussion document).

Background

2. The discussion document has been released in the context of the impending expiry in 2016 of the governance arrangements provided for in the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010.
3. The purpose of that Act was twofold:¹
 - (a) to replace democratically elected members of the Canterbury Regional Council with commissioners who would act as the Council’s governing body until new elected members came into office following the next election; and
 - (b) to provide the Council with powers that it did not otherwise have, to address certain issues regarding the efficient, effective and sustainable management of fresh water within the Canterbury region.
4. The intended temporary nature of the arrangements effected by the Act was apparent from both the Short Title, which included the phrase *“Temporary Commissioners”* and stated purpose in section 3(a) of the Act of the arrangements being *“until new elected members come into office following the next election ...”*.
5. The Act was the subject of some public concern regarding both the manner of its passage, being under urgency, and the nature of the substantive arrangements effected by it, being inconsistent with core democratic processes and values.

¹ Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010, s2.

6. The importance of those democratic values has been recognised in numerous contexts, including many political arrangements since the signing of the Treaty of Waitangi, government and local body processes and the New Zealand Bill of Rights Act 1990. The commitment of New Zealanders to democratic values cannot be seriously challenged.
7. The Law Society's concerns about the 2010 Act were such that, by way of letter dated 28 September 2010, it wrote to the Attorney-General raising various concerns about the inconsistency of the Act and the manner of its passage. A copy of that letter is attached.
8. In 2012 the Environment Canterbury (Temporary Commissioners and Improved Water Management) Bill (Bill) was introduced. Its purpose was to extend the arrangements made in the 2010 Act.
9. The Law Society made written and oral submissions on that Bill to the select committee. A copy of those submissions is attached. The Law Society's concerns included:
 - 9.1 The inadequacy of any justification for the continuation of the term of non-elected commissioners, resulting in a total term of six and a half years.
 - 9.2 The unilateral decision-making process that led to that continuation. Advice to government recommending a mixed transitional body did not appear to have been given any significant weight.
 - 9.3 Substantial concern as to the proposed continuation expressed by or on behalf of the public at large, both within and outside of the Canterbury region.
10. The Bill was nevertheless passed. By the time of the expiry of the 2010 Act regional council democratic processes will have been suspended in Canterbury for six and a half years. That is hardly consistent with "temporary" arrangements.

The current proposal

11. The Law Society views positively the proposed re-introduction of a degree of democracy, by way of some elected members. However, this does not represent a return to full democracy.
12. The Law Society agrees with certain goals in the discussion document (high quality leadership, economic growth, strong environmental stewardship, strong accountability to local communities and value and efficiency for ratepayer money),² but considers that there is inadequate rationale advanced for why those goals cannot be achieved by elected members.

² Summarised on page 24 of the discussion document.

13. If, as is suggested by the discussion document, the goals set out on page 13 have now been achieved, then the justification for only partial democracy for a term of three years (2016 – 2019) is unclear. There is sufficient time between now and 2016 to enable transitional arrangements to be put in place and effected, with elected members governing from 2016, after the expiry of the arrangements made under the (extended) 2010 Act.
14. Even if there were any justification for the derogation from democracy in the 2010 Act, the time for a return to full democracy has passed. The Law Society's view is as set out in its letter of 28 September 2010 to the Attorney-General and submissions on the 2012 Bill, modified to take account of the proposed re-introduction of partial democracy.
15. The discussion document foreshadows that any changes will need to be implemented by legislation. The Law Society considers that any proposed changes should follow the usual legislative process, rather than use of urgency, and will wish to be heard on that Bill (if any).

Conclusion

If you wish to discuss these comments, please do not hesitate to contact the convenor of the Law Society's Rule of Law Committee, Austin Forbes QC, via the committee secretary Vicky Stanbridge (04 463 2912, vicky.stanbridge@lawsociety.org.nz).

Yours sincerely

A handwritten signature in black ink, consisting of a large, stylized initial 'C' followed by a long horizontal line.

Chris Moore
President

Attachments:

New Zealand Law Society letter dated 28 September 2010 to the Attorney-General
New Zealand Law Society submission dated 23 October 2012 on the Environment Canterbury (Temporary Commissioners and Improvement Water Management) Amendment Bill