



Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010

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Commencement see section 2

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**Environment Canterbury (Temporary
Commissioners and Improved Water
Management) Act 2010**

2010 No 12

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

**Part 1
Preliminary provisions**

3 Purpose

The purpose of this Act is to

- (a) provide for the replacement of the elected members of the Canterbury Regional Council with commissioners who will act as the Council's governing body until new elected members come into office following the next election; and
- (b) provide the Council with certain powers that it does not otherwise have to address issues relevant to the efficient, effective, and sustainable management of fresh water in the Canterbury region.

4 Interpretation

- (1) In this Act, unless the context otherwise requires,

2013 election means the triennial general election of members of ECan that (subject to section 11 of the Local Electoral Act 2001) must be held on the second Saturday in October 2013

Canterbury region means the region of ECan

Canterbury WCO or **WCO** means a water conservation order in respect of a water body in the Canterbury region

commencement day means the day on which this Act comes into force

commissioner means a person appointed under section 10 or 15

CWMS means the *Canterbury Water Management Strategy Strategic Framework*, November 2009

Environment Canterbury or **ECan** means the Canterbury Regional Council constituted by the Local Government (Canterbury Region) Reorganisation Order 1989 (*Gazette*, 1989, p2296)

Hurunui WCO application has the meaning given in Part 2 of Schedule 2

Minister means the Minister for the Environment

Minister of Local Government means the Minister who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of the Local Government Act 2002

next election means the next general election of members of ECan held under section 8 of the Local Electoral Act 2001 after the commencement of this Act or the 2013 election, whichever occurs first

permit has the meaning given in section 33

proposed regional policy statement or plan has the meaning given in section 61

replacement day means the day determined under section 8

responsible Ministers means the Minister and the Minister of Local Government

resumption day means the day after the day on which the candidates for membership of ECan in the next election are declared to be elected or, if there is more than 1 day, the last of those days

RMA means the Resource Management Act 1991

specified application has the meaning given in section 33

vision and principles of the CWMS

- (a) means the text of the vision and principles included in the CWMS
 - (i) as reproduced in Part 1 of Schedule 1; and
 - (ii) the status and preparation of which are described in Part 2 of Schedule 1; but
- (b) does not include any amendments to that text

WCO application means an application

- (a) for a Canterbury WCO; and
 - (b) to revoke or vary a Canterbury WCO.
- (2) To avoid doubt, the inclusion of the vision and principles of the CWMS in Part 1 of Schedule 1 does not accord to the CWMS or its vision and principles any status in law other than as provided in this Act.
- (3) Any term or expression that is defined in the Local Government Act 2002 and used, but not defined, in Part 2 of this Act has the same meaning as in the Local Government Act 2002.
- (4) Any term or expression that is defined in the RMA and used, but not defined, in Part 3 of this Act has the same meaning as in the RMA.
- (5) This Act prevails where there is any inconsistency between this Act and the RMA, the Local Electoral Act 2001, or the Local Government Act 2002.

5 Act binds the Crown

This Act binds the Crown.

6 Expiry and repeal

- (1) The following provisions expire and are repealed on the close of the day before the resumption day:
- (a) Part 2, except section 23; and
 - (b) subpart 2 of Part 3, except sections 33 and 37 to 44; and
 - (c) subpart 3 of Part 3, except sections 52 to 55 and 60; and
 - (d) subpart 4 of Part 3, except sections 64 to 69; and
 - (e) Schedule 1.
- (2) Section 23 expires and is repealed on the close of the resumption day.
- (3) The rest of the Act expires and is repealed on a date to be appointed by the Governor-General by Order in Council.

Part 2

Replacement of governing body of ECan

7 What this Part does

This Part

- (a) sets out the procedure to be followed in terminating the office of the elected members of ECan and replacing them on the replacement day with commissioners; and
- (b) prescribes the functions of those commissioners; and
- (c) defers the next triennial general election of members of ECan; and
- (d) sets out how this Part fits with the Local Electoral Act 2001 and the Local Government Act 2002.

Termination of office of elected members

8 Replacement day

The responsible Ministers must determine the replacement day and give notice of it

- (a) in the *Gazette*; and
- (b) to the elected members of ECan.

9 Elected members cease to hold office on close of day before replacement day

- (1) On the close of the day before the replacement day, the elected members of ECan then holding office (the **elected members**) cease to hold office.
- (2) This section applies no matter what the Local Electoral Act 2001 or the Local Government Act 2002 may say.
- (3) An elected member is not entitled to any compensation or other payment or benefit for the loss of office.

Appointment of commissioners

10 Appointment of commissioners

The responsible Ministers must, in accordance with sections 12 and 14, appoint 4 to 7 commissioners as the governing body of ECan.

11 First appointment of commissioners takes effect on replacement day

The first appointment of commissioners takes effect on the replacement day.

12 How appointment of commissioners made

- (1) The responsible Ministers must make the appointment by giving the person appointed a written notice of appointment that complies with subsection (2).
- (2) The notice of appointment must
 - (a) state the date on which the appointment takes effect (which must be the replacement day in the case of the first appointment of commissioners); and
 - (b) state the term of the appointment; and
 - (c) specify the terms of reference for the commissioners.
- (3) As soon as practicable, the responsible Ministers must
 - (a) notify the appointment (including the terms of reference for the commissioners) in the *Gazette*; and
 - (b) give a copy of the notice of appointment to ECan.
- (4) More than 1 commissioner may be appointed in the same notice of appointment.

13 Amendment of terms of reference for commissioners

The responsible Ministers may at any time amend the terms of reference for the commissioners and as soon as practicable after amendment the responsible Ministers must

- (a) notify the commissioners of the amended terms of reference; and
- (b) publish the amended terms of reference in the *Gazette*.

14 Commissioners must have collective knowledge and expertise in certain matters

- (1) The responsible Ministers must appoint commissioners who collectively have knowledge of, and expertise in relation to, the following matters:
 - (a) organisational change; and
 - (b) fresh water management; and
 - (c) local authority governance and management; and
 - (d) tikanga Mori, as it applies in the Canterbury region; and
 - (e) the Canterbury region and its people.
- (2) However, nothing in subsection (1) affects the validity of the appointment of a commissioner once made.

15 Subsequent appointment of commissioners

- (1) The responsible Ministers may appoint additional commissioners after the first appointment of commissioners, except that the total number of commissioners must not be more than 7.
- (2) The responsible Ministers may appoint a commissioner to replace a commissioner who vacates office.
- (3) Sections 12 and 14 apply to the appointment of an additional commissioner or a commissioner to fill a vacancy.

16 Chairperson and deputy chairperson of commissioners

- (1) The responsible Ministers must appoint 1 of the commissioners to be the chairperson of the commissioners.
- (2) The responsible Ministers must appoint 1 of the commissioners to be the deputy chairperson of the commissioners.
- (3) The responsible Ministers must make each appointment by giving the person appointed a written notice of appointment.
- (4) As soon as practicable, the responsible Ministers must
 - (a) notify the appointment in the *Gazette*; and
 - (b) give a copy of the notice of appointment to ECan.
- (5) The responsible Ministers may terminate the appointment of a commissioner as chairperson or deputy chairperson by written notice to that person.

17 Term of office

- (1) The term of office of a commissioner ends when the commissioner vacates office or on the close of the day before the resumption day, whichever occurs first.
- (2) A commissioner vacates office if he or she
 - (a) is removed by written notice given by the responsible Ministers; or
 - (b) resigns by written notice given to the responsible Ministers.
- (3) The responsible Ministers may in their complete discretion remove a commissioner by written notice at any time.
- (4) As soon as practicable, the responsible Ministers must
 - (a) notify the removal or resignation of a commissioner in the *Gazette*; and

- (b) give a copy of the notice of removal or resignation to ECan.

18 Commissioners' remuneration and expenses

- (1) A commissioner is entitled to be paid
 - (a) remuneration by way of salary, fees, and allowances at a rate determined by the responsible Ministers; and
 - (b) travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951.
- (2) ECan must pay out of its own funds all expenditure incurred by a commissioner in carrying out his or her functions under this Act or any other Act, including the remuneration, allowances, and expenses to which the commissioner is entitled under subsection (1).

19 Exclusion of commissioners' liability

A commissioner is not liable for any act done or omitted to be done by him or her in good faith in the performance or intended performance of his or her functions, responsibilities, or duties as a commissioner, or in the exercise or intended exercise of his or her powers as a commissioner.

Functions of commissioners

20 Commissioners constitute governing body of ECan

During their term of office, the commissioners constitute the governing body of ECan and must

- (a) perform all the functions, responsibilities, and duties, and exercise all the powers, of the governing body; and
- (b) perform any other functions, responsibilities, or duties specified in the terms of reference for the commissioners; and
- (c) exercise the powers and perform the functions set out in Part 3; and
- (d) comply with the terms of reference for the commissioners.

21 Commissioners must establish advice process

The commissioners must as soon as practicable establish a process for seeking advice from the mayors of the territorial authorities in the Canterbury region on local issues that affect the exercise of the powers, and the performance of the functions, of ECan.

*2010 election for members of ECan***22 2010 election for members of ECan must not be held**

- (1) The triennial general election of members of ECan that would otherwise be held on the second Saturday in October 2010 (the **2010 election**) must not be held and to that extent section 10(2) of the Local Electoral Act 2001 does not apply.
- (2) A notice given by an electoral officer in respect of the 2010 election under section 52 of the Local Electoral Act 2001 is of no force or effect.
- (3) If a notice referred to in subsection (2) has been given before the commencement of this section, the electoral officer must as soon as practicable give public notice that the 2010 election will not be held.

*Next election***23 Members of ECan elected at next election**

- (1) The members of ECan elected at the next election come into office on the resumption day.
- (2) Subsection (1) prevails over section 115(2) of the Local Electoral Act 2001.
- (3) If the next election is an election held under section 8 of the Local Electoral Act 2001, the provisions of that Act that apply to a triennial general election apply also to the next election held under section 8.

*Application of other enactments***24 References to members, chairperson, and deputy chairperson**

- (1) During the term of office of the commissioners, every reference in the Local Government Act 2002 and any other Act to

- (a) a member or an elected member of a local authority must, in relation to ECan, be read as referring to a commissioner; and
 - (b) the chairperson of a regional council must, in relation to ECan, be read as referring to the chairperson of the commissioners appointed under section 16(1); and
 - (c) the deputy chairperson of a regional council must, in relation to ECan, be read as referring to the deputy chairperson of the commissioners appointed under section 16(2).
- (2) This section applies subject to sections 25 and 26.

25 Provisions of Local Government Act 2002 that do not apply

The following provisions of the Local Government Act 2002 do not apply to the commissioners or in respect of ECan during the commissioners' term of office:

- (a) section 41(1):
- (b) any provision relating to the election or appointment of, or vacation of office by, the members, chairperson, or deputy chairperson of a regional council, including section 48(a) and (d) and clauses 1 to 5, 17, 18, 25, and 26(4) of Schedule 7:
- (c) any provision relating to the remuneration of members, including section 48(b) and clauses 6 to 13 of Schedule 7:
- (d) clauses 14 and 21 of Schedule 7.

26 Provisions of Local Electoral Act 2001 that do not apply

- (1) The following provisions of the Local Electoral Act 2001 do not apply to the commissioners or in respect of ECan during the commissioners' term of office:
- (a) section 19D:
 - (b) any provision relating to the election or appointment of, or vacation of office by, the members of a regional council, including sections 115(3), 116, and 117.
- (2) However, nothing in subsection (1) prevents any step being taken that must be taken under the Local Electoral Act 2001 for the purposes of the next election.

Saving and transitional provisions

- 27 Saving for acts of elected members of ECan**
Nothing in this Act affects the validity of anything done by a person in his or her capacity as an elected member of ECan before the replacement day.
- 28 Continuation of committees and delegations**
Nothing in this Act affects the continuation on the replacement day of
- (a) the business or membership of any committee or other subordinate decision-making body of ECan; or
 - (b) delegations by ECan.

Part 3**Additional functions and powers of ECan
after commencement day**

Subpart 1—Preliminary matters

- 29 What this Part does**
This Part
- (a) provides, in subpart 1, for the application of the purpose and principles of Part 2 of the RMA to the performance of functions and exercise of powers by ECan under this Part and confers the power to make transitional regulations; and
 - (b) confers, in subpart 2, a power for ECan to impose 1 or more moratoria on specified applications made under the RMA for certain permits; and
 - (c) in subpart 3, largely replaces Part 9 of the RMA for the purposes of Canterbury WCOs; and
 - (d) in subpart 4, alters the processes and criteria that apply to the consideration of proposed regional policy statements or plans for the Canterbury region.
- 30 Application of Part 2 of RMA to this Part**
Part 2 of the RMA applies to the performance and exercise by ECan of its functions and powers under this Part.

31 Transitional regulations

The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations to

- (a) prescribe provisions concerning the commencement or duration of the powers and functions of ECan, which may be in addition to or in place of the provisions of this Part;
- (b) provide that, subject to any conditions specified in the regulations, in respect of this Part,
 - (i) for a specified period of time or in specified circumstances, specified provisions of the RMA (including definitions)
 - (A) do not apply, despite being applied under this Act; or
 - (B) do apply, despite not applying under this Act;
 - (ii) specified terms have the meaning given to them by the regulations;
- (c) provide for the application of provisions of this Part, with any necessary modifications, despite their expiry and repeal under section 6;
- (d) provide for the expiry of any regulations made under this section.

Subpart 2—Moratoria on specified
applications

32 Application of RMA under this subpart

This subpart applies in addition to the RMA, except as otherwise expressly provided.

33 Interpretation

In this subpart,

permit means a permit within the meaning of paragraph (a) of the definition of specified application

relevant regional plan means any regional plan or proposed regional plan relevant to the management of fresh water in an area of the Canterbury region

specified application

- (a) means an application in relation to the Canterbury region for
 - (i) a water permit that allows the taking, use, damming, or diverting of
 - (A) water that would otherwise contravene section 14(2)(a) of the RMA; or
 - (B) heat or energy from water or the material surrounding geothermal water that would otherwise contravene section 14(2)(b) or (c) of the RMA;
 - (ii) a discharge permit that allows a discharge of any
 - (A) contaminant or water into water that would otherwise contravene section 15(1)(a) of the RMA; or
 - (B) contaminant onto or into land that would otherwise contravene section 15(1)(b) of the RMA; and
- (b) includes an application to change or cancel any conditions of a permit referred to in paragraph (a).

*Imposition of moratorium***34 Power to impose moratorium on specified applications**

- (1) ECan may, with the prior approval of the Minister, impose a moratorium on specified applications in relation to 1 or more areas of the Canterbury region.
- (2) In determining whether to impose or approve a moratorium in relation to an area of the Canterbury region, ECan and the Minister must have regard to
 - (a) the vision and principles of the CWMS; and
 - (b) the extent to which the fresh water of that area
 - (i) is subject to high or increasing demand or to diminishing quality; or
 - (ii) is fully allocated, nearing full allocation, or over-allocated; and
 - (c) any other relevant matter.
- (3) The effect of a moratorium is set out in sections 37 to 40.

35 Notification of moratorium

ECan must give public notice and notice in the *Gazette* of a moratorium, specifying

- (a) the area of the Canterbury region to which the moratorium applies; and
- (b) the date on which it commences; and
- (c) the date on which it ends (which must not be later than the day before the resumption day), unless ended sooner under section 36.

36 Power to end moratorium

- (1) ECan may end a moratorium at any time in any area to which the moratorium relates, or the Minister may direct ECan to end the moratorium.
- (2) A moratorium may be ended in relation to a part or the whole of the area to which it applies.
- (3) In determining whether to end, or to direct the end of, a moratorium, ECan or the Minister, as the case may be, must have regard to the adequacy of any relevant regional plan for the area to which the moratorium relates.
- (4) ECan must give public notice and notice in the *Gazette* of the end of a moratorium, specifying
 - (a) the area of the Canterbury region to which the moratorium applies; and
 - (b) if the moratorium will not end in respect of the whole of that area, the part of the area in respect of which the moratorium will end; and
 - (c) the date on which the moratorium will end.

*Effect of moratorium***37 Effect of moratorium on specified applications made during currency, or after end, of moratorium**

- (1) This section applies to a specified application made to ECan in respect of an area where a moratorium
 - (a) is in force; or
 - (b) has been in force within 6 months prior to that application being made.

- (2) If the specified application is made while a moratorium is in force, ECan
 - (a) must not begin to process the application; and
 - (b) must return the application and any fee accompanying it to the applicant as soon as practicable.
- (3) If the specified application is made at any time during the period that ends 6 months after the end of a moratorium, ECan must not begin to process the application until after the end of that period.

38 Specified applications made before moratorium in force

- (1) In the case of specified applications made to ECan before a moratorium comes into force in respect of the area to which the application relates, ECan must not continue to process or determine an application any earlier than the end of the period that ends 6 months after the end of the moratorium.
- (2) However, ECan must continue to process and determine a specified application as if there were no moratorium in force if, before a moratorium comes into force, ECan has decided in respect of the application that
 - (a) a hearing must be held and the hearing has commenced or been completed; or
 - (b) no hearing is required.

39 Effect of moratorium on applications for which request is made under section 87D of RMA

- (1) This section applies if, before a moratorium is in force in an area to which a specified application relates, the applicant requests ECan under section 87D of the RMA to allow the application to be determined by the Environment Court instead of by ECan.
- (2) The specified application is to be treated as one to which section 38(1) applies if, before a moratorium comes into force, ECan
 - (a) declines the request; or
 - (b) has not made a decision on the request.
- (3) However, if ECan decides under section 87E of the RMA to grant a request before a moratorium comes into force, the

moratorium is of no effect in respect of the specified application to which the request relates, unless subsection (4) applies.

- (4) If section 87I of the RMA applies, the specified application must be treated as an application to which section 38(1) applies.

40 Effect of moratorium on permits granted before moratorium in force

- (1) Subsection (2) applies if a permit
- (a) has been granted (whether before or after the commencement day) in relation to an area of the Canterbury region where a moratorium subsequently comes into force; and
 - (b) is due to expire during, or within 6 months after the end of, the moratorium.
- (2) The permit is to be treated as expiring on the date that is 6 months after the end of the moratorium.

Treatment of specified applications at end of moratorium

41 Specified applications held over during moratorium may be revised

- (1) If the processing of a specified application is interrupted under section 38(1) during a moratorium, the applicant may, in the period commencing with the end of the moratorium and ending 6 months later,
- (a) revise the application to take account of any changes made to the relevant regional plan since the application was first made; and
 - (b) lodge any revised application again with ECan.
- (2) Not later than 5 working days before the end of a moratorium, ECan must give notice to any applicant whose application is affected in the manner referred to in subsection (1), advising the applicant
- (a) of the date on which the moratorium will end; and
 - (b) of the applicant's right to revise the application and lodge it again with ECan.

- (3) Subsection (1)(a) permits revision of a specified application only if, and to the extent that, the application
- (a) is revised no more than is necessary to take into account changes made to the relevant regional plan since the application was first lodged; and
 - (b) remains within the scope of the application as it was first lodged.

42 Process to apply to specified applications after end of moratorium

- (1) On the day that is 6 months after the end of a moratorium, ECan must
- (a) resume processing any specified applications to which section 38(1) applies, including any applications revised and lodged again as permitted by section 41(1) and (3); and
 - (b) process those applications
 - (i) as having been received on the date that the original application was first lodged; but
 - (ii) under any relevant regional plan applying at the time when the application is considered.
- (2) On the day that is 6 months after the end of a moratorium, ECan must commence processing, in accordance with subsection (3), any specified application to which
- (a) section 37(3) applies; or
 - (b) section 38(1) applies, if the application has been revised, but not in accordance with section 41(3).
- (3) ECan must process an application to which subsection (2) applies
- (a) as if it were a new application made
 - (i) on the day it was first lodged, in the case of an application to which subsection (2)(a) refers;
 - (ii) on the day it was lodged again, in the case of an application to which subsection (2)(b) refers; and
 - (b) under any relevant regional plan applying at the time when the application is considered.
- (4) Subsections (1)(b)(ii) and (3)(b) apply instead of section 88A of the RMA.

43 Application of certain provisions of RMA

- (1) Section 124(3) of the RMA applies to a permit that is extended by the operation of section 40, but only if the holder of the permit applies to ECan for a new permit
- (a) for the same activity; and
 - (b) on or before the day that the existing permit expires under section 40(2).
- (2) If a specified application is made in the circumstances described in subsection (1),
- (a) for the purposes of sections 124A to 124C of the RMA, the application is one that is affected by section 124 of that Act; and
 - (b) the references in section 124C(4) and (5) to an application being made more than 3 months before the expiry of the consent must be read as a reference to an application being made on or before the day that the permit is to be treated as expiring under section 40(2).

*Exclusions***44 No compensation**

No compensation is payable by the Crown or ECan to any person for any loss or damage arising from the application of this subpart.

45 Provisions of Local Government Act 2002 that do not apply

Nothing in sections 76 to 82 of the Local Government Act 2002 applies to ECan in relation to its functions and powers under this subpart.

Subpart 3—Water conservation orders

46 Part 9 of RMA does not apply except as otherwise stated

- (1) Except as expressly provided in this subpart, this subpart applies instead of Part 9 of the RMA to every application for a Canterbury WCO
- (a) on and from the commencement day; and
 - (b) until the close of the day before the resumption day.

- (2) Subsection (1) applies whether an application is made before, on, or after the commencement day.
- (3) Subsection (1) does not limit or otherwise affect the application of section 217 of the RMA to a Canterbury WCO.
- (4) Despite subsection (1), the following provisions continue to apply on and from the resumption day:
 - (a) sections 52 to 55 (which remove the jurisdiction of the Environment Court in relation to Canterbury WCO applications and provide instead for a right of appeal to the High Court on a question of law); and
 - (b) section 60 (which provides for the transitional arrangements set out in Schedule 2).

Provisions relating to processing of applications

47 Applications to Minister under section 201 of RMA

- (1) Section 201 of the RMA applies to every application for a Canterbury WCO.
- (2) The application must state the reasons for the application with reference, as appropriate, to the matters provided for in sections 50(2) and 57(2) instead of those referred to in section 201(2)(b) of the RMA.

48 Processing of applications

- (1) After receiving a WCO application and any further information that the Minister may require, the Minister
 - (a) may make any inquiry that the Minister considers necessary; and
 - (b) as soon as practicable, must either
 - (i) reject the application; or
 - (ii) submit the application to ECan to hear and report on.
- (2) The Minister must notify the applicant
 - (a) that the application has been rejected, and the reasons for the rejection; or
 - (b) that the application is to be heard and reported on by ECan under this Act.

49 ECan to notify applications

- (1) As soon as practicable after receiving an application from the Minister under section 48(1)(b)(ii), ECan must comply with section 204 of the RMA as if every reference in that section to a special tribunal were a reference to ECan.
- (2) The notice required by section 204(1)(c) is not required to be served on ECan.

*Criteria and process for consideration of
applications*

50 Consideration of applications by ECan

- (1) After considering a WCO application submitted by the Minister under section 48(1)(b)(ii) and any submissions and other information relevant to the application, ECan must determine whether to recommend that the Minister should
 - (a) reject the application; or
 - (b) recommend to the Governor-General that a Canterbury WCO be made under section 214 of the RMA, as applied by section 56.
- (2) In considering whether to recommend to the Minister that a WCO be made, ECan must, subject to Part 2 of the RMA,
 - (a) have particular regard to
 - (i) the matters set out in subsections (3) and (4); and
 - (ii) the vision and principles of the CWMS; and
 - (b) have regard to the matters specified in section 207(a) to (c) of the RMA.
- (3) ECan may recommend to the Minister that a WCO be made to recognise and sustain
 - (a) outstanding amenity or intrinsic values that are afforded by waters in their natural state; or
 - (b) where waters are no longer in their natural state, the amenity or intrinsic values of those waters that in themselves warrant protection because they are considered outstanding.
- (4) Section 199(2) of the RMA applies to a WCO recommended by ECan.

51 Submissions, hearing, and report

Sections 205, 206, and 208 of the RMA (which provide for submissions, a hearing, and reporting in relation to an application) apply to a WCO application made under this subpart as if

- (a) every reference to a special tribunal were a reference to ECan; and
- (b) the references in section 205(3)(d) and (5) of the RMA to the matters in sections 199, 200, and 207 of that Act were references to the matters referred to in sections 50(2) and 57(2); and
- (c) section 208(2)(c) of that Act excluded the reference to the regional council.

*Appeals on question of law only***52 Jurisdiction of Environment Court excluded**

The Environment Court has no jurisdiction under this subpart and no person may make a submission to the Environment Court in respect of a report prepared and notified by ECan under section 51.

53 Right of appeal to High Court on question of law

- (1) The persons listed in subsection (2) may appeal to the High Court, but only on a question of law, in respect of the whole or a part of a report of ECan recommending that
 - (a) a WCO application be declined; or
 - (b) a Canterbury WCO be made on the terms of the draft order included in that report.
- (2) The persons are
 - (a) the person who applied for the Canterbury WCO to which the report relates;
 - (b) a territorial authority whose district may be affected by the proposed Canterbury WCO;
 - (c) a person who made a submission to ECan on the application;
 - (d) any other person granted leave to appeal by the High Court on the ground that the person could not reasonably be expected to know that the report of ECan would

affect the person or an aspect of the public interest that the person represents.

54 Provisions of RMA applying to appeal procedure

- (1) Sections 300 to 307 of the RMA apply to an appeal under section 53, with the necessary modifications including, in particular, as if every reference to the Environment Court or the Registrar of that court were a reference to ECan.
- (2) The High Court Rules apply if a procedural matter is not provided for by or under those sections.

55 Appeal to Court of Appeal

Section 144 of the Summary Proceedings Act 1957 applies to a decision of the High Court on an appeal under section 53 as if the decision had been made under section 107 of the Summary Proceedings Act 1957.

Making or declining to make WCO

56 Application of sections 214 and 215 of RMA

Sections 214 and 215 of the RMA apply, with the necessary modifications, to making or declining to make a Canterbury WCO as if

- (a) every reference to a report of a special tribunal under section 208 of the RMA were a reference to a report of ECan under this subpart; and
- (b) the references to the Environment Court were omitted.

57 Scope and effect of WCO made under this subpart

- (1) A Canterbury WCO made under section 214 of the RMA, as applied by section 56, may impose restrictions or prohibitions on the performance of any of ECan's functions under section 30(1)(e) and (f) of the RMA as they relate to water.
- (2) Restrictions or prohibitions imposed under subsection (1) may include, in particular, restrictions or prohibitions relating to
 - (a) the quantity, quality, rate of flow, or level of the water in a water body:

- (b) the maximum and minimum levels or flow or range of levels or flows, or the rate of change of levels or flows to be sought or permitted for the water body:
- (c) the maximum allocation for abstraction or maximum contaminant loading consistent with the purposes of the order:
- (d) the ranges of temperature and pressure in a water body.

Revocations and variations

58 Applications to revoke or vary WCOs

- (1) Section 216(1) and (2) of the RMA apply in respect of an application to revoke or vary a Canterbury WCO.
- (2) Despite anything in this subpart, the Minister may, instead of submitting an application to revoke or vary a Canterbury WCO to ECan under section 48(1)(b)(ii), recommend that the Canterbury WCO to which the application relates be amended if
 - (a) the Minister is of the opinion that
 - (i) the application should not be rejected; but
 - (ii) because of the minor effect of the amendment, it is unnecessary for ECan to consider the application; and
 - (b) both ECan and the original applicant for the WCO (if that person can be located) agree to the amendment.
- (3) The Governor-General may, by Order in Council made on the recommendation of the Minister under subsection (2), amend the WCO accordingly.

Delegations under this subpart

59 Delegation by ECan of functions, powers, and duties

- (1) ECan may delegate its functions, powers, and duties under this subpart (except the power to delegate) to
 - (a) an employee; or
 - (b) a hearings commissioner appointed by ECan.
- (2) Section 34(7) to (10) of the RMA (which relate to delegations under that Act) apply, with any necessary modifications, to delegations made under subsection (1).
- (3) Subsection (2) does not limit clause 32 of Schedule 7 of the Local Government Act 2002.

*Transitional matters***60 Transitional provisions**

- (1) If an application for a Canterbury WCO is received by ECan before the resumption day and, before that day,
- (a) a hearing has not commenced, the application must be returned to the Minister and clauses 1 to 3 of Schedule 2 apply;
 - (b) a hearing has commenced, clauses 4 and 5 of Schedule 2 apply.
- (2) Part 2 of Schedule 2 applies to ECan's exercise of its powers and performance of its functions in relation to the Hurunui WCO application.

Subpart 4—Process for approval of proposed regional policy statements or plans*Preliminary matters***61 Meaning of proposed regional policy statement or plan**

In this subpart, **proposed regional policy statement or plan**

- (a) means
- (i) any proposed plan or change to, or variation of, a plan notified by ECan under clause 5 or 26 of Schedule 1 of the RMA
 - (A) after the commencement of this Act; or
 - (B) before the commencement of this Act, but only if no decision has been made under clause 10 of that Schedule before the commencement of this Act;
 - (ii) any proposed regional policy statement or change to, or variation of, a regional policy statement that is notified by ECan under the clauses mentioned in subparagraph (i) after the commencement of this Act; but
- (b) does not include a proposed regional coastal plan or change to, or variation of, a regional coastal plan, whether that plan is notified before or after the commencement of this Act.

62 Application of RMA

- (1) Except as expressly provided otherwise in this subpart, the provisions of the RMA apply, as far as they are relevant, to any proposed regional policy statement or plan.
- (2) However, subsection (1) does not override section 161 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (a transitional provision relating to proposed policy statements, plans, or changes to policy statements or plans publicly notified before 1 October 2009).

Additional criteria for decision making

63 Additional relevant criteria

In considering any proposed regional policy statement or plan, ECan must have particular regard to the vision and principles of the CWMS in addition to the matters relevant under the RMA to its decisions made under clause 10(1) of Schedule 1 of that Act.

Procedural arrangements

64 Application of sections 65 to 68

Sections 65 to 68 apply only to decisions

- (a) made under clause 10 of Schedule 1 of the RMA by ECan; and
- (b) in respect of which ECan must have particular regard to the additional criteria specified in section 63.

65 Notification of decision

A notice served by ECan under clause 11 of Schedule 1 of the RMA must include a statement of the time within which an appeal on a question of law may be lodged by a submitter under section 66.

66 Right of appeal to High Court on question of law

- (1) No person may appeal to the Environment Court under clause 14 of Schedule 1 of the RMA in respect of any of the decisions referred to in section 64.
- (2) However, a person who made a submission under clause 6 or 8 of Schedule 1 of the RMA on a proposed regional policy

statement or plan may appeal to the High Court, but only on a question of law, against a decision referred to in section 64.

67 Scope of right of appeal

Any appeal under section 66(2)

- (a) must be lodged in accordance with the requirements stated in the notice served under section 65; and
- (b) may relate only to a provision or matter raised in the submission of the person lodging the appeal.

68 Appeal procedure

Sections 54 and 55 apply to an appeal under this subpart.

Transitional provision

69 Procedures if proposed regional policy statement or plan under consideration before commencement day

- (1) Subsection (2) applies if, on or after the commencement day,
 - (a) ECan revokes a delegation under section 34 or 34A of the RMA of the power to make a decision under clause 10 of Schedule 1 of that Act on a matter raised in a submission on a proposed regional policy statement or plan; and
 - (b) any hearing on that submission has been concluded.
- (2) Despite any other enactment or rule of law, ECan (or any other person to whom the power is delegated under section 34 or 34A of the RMA to make a decision on the submission under clause 10 of Schedule 1 of that Act) may make the decision
 - (a) without holding a further hearing; but
 - (b) only after first considering
 - (i) the submissions made in relation to that matter; and
 - (ii) the evidence presented at the hearing; and
 - (iii) any reports of an officer of ECan or expert commissioned by the person with authority to conduct a hearing under section 34 or 34A of the RMA.
- (3) Despite any other enactment or rule of law, after the commencement day ECan is not required to give a further oppor-

tunity to any person to make submissions on, or be heard in relation to, a proposed regional policy statement or plan solely because of changes in the matters to which ECan must have particular regard when making decisions under clause 10(1) of Schedule 1 of the RMA.

Schedule 1

ss 4, 6, 34, 50, 63

**Vision and principles of Canterbury
Water Management Strategy Strategic
Framework, November 2009****Part 1****Vision and principles****Vision**

To enable present and future generations to gain the greatest social, economic, recreational and cultural benefits from our water resources within an environmentally sustainable framework.

Fundamental principles**Primary principles****1 Sustainable management**

Water is a public resource which must be managed in accordance with sustainability principles and be consistent with the Resource Management and Local Government Acts.

2 Regional approach

- The planning of natural water use is guided by the following:
 - first order priority considerations: the environment, customary uses, community supplies and stock water
 - second order priority considerations: irrigation, renewable electricity generation, recreation, tourism and amenity
- A consistent regulatory approach to water is applied throughout the Canterbury region, recognising these principles
- Both surface and groundwater are given equal importance

- Further development of scientific knowledge of the regions water resources and the impacts of climate change are given priority
- The actual or potential cumulative effects the taking and using water can have on waterways are recognised and managed within defined standards
- A cautious approach is taken when information is uncertain, unreliable, or inadequate
- The need for efficient use of water in existing and new infrastructure is recognised
- There is strong emphasis on the integration of water and land management including protection of indigenous biodiversity and enhancement of water quality
- Current and potential effects of land use intensification is an integral part of decision-making on water takes. This may mean amending regional and district plans.

3 Kaitiakitanga

- The exercise of kaitiakitanga by Ngai Tahu applies to all water and lakes, rivers, hapua, waterways and wetlands, and shall be carried out in accordance with tikanga Maori.

Supporting principles

4 Natural character

The natural character (mauri¹) of Canterbury's rivers, streams, lakes, groundwater and wetlands is preserved and enhanced:

- natural flow regimes of rivers are maintained and, where they have been adversely affected by takes, enhanced where possible
- the dynamic processes of Canterbury's braided rivers define their character and are protected
- environmental flow regimes are established for every waterway where abstraction occurs

- that restoration of natural character and biodiversity, is a priority for degraded waterways, particularly lowland streams and lowland catchments
- the interdependence of waterways and coastal ecosystems is recognised.

5 Indigenous biodiversity

- Indigenous flora and fauna and their habitats in rivers, streams, lakes, groundwater and wetlands are protected and valued.
- The aims of the Canterbury Biodiversity Strategy are recognised and supported.

6 Access

- Public access to and along rivers, lakes, waterways and wetlands is maintained and, where appropriate, enhanced. Access may need to be limited in situations including where environmental risk, public safety, security of assets, cultural values, biodiversity and farm management require.

7 Quality drinking water

- All those living in Canterbury have access to high quality drinking water:
- The regions high quality aquifer-sourced drinking water is protected.
- Where Canterbury's drinking water is currently untreated and safe for drinking, it is maintained at that high standard.

¹ Mauri the life force. In the environment, mauri is used to describe the intrinsic values of all resources and of the total ecosystem.

8 Recreational and amenity opportunities

- Rivers, lakes, groundwater and wetlands provide opportunities for enjoyment, recreation and tourism:
- High quality water ensures contact recreation such as swimming, fishing, boating and other water sports are able to be enjoyed throughout Canterbury.
- Adequate environmental flows should ensure that recreational users and tourists can enjoy Canterbury rivers.
- Eco-tourism opportunities are recognised and encouraged.

9 Community and commercial use

Water resources are used sustainably to enhance quality of life:

- where water is abstracted, it is used effectively and efficiently:
- land use, industry, and business practices to not adversely impact on natural water quality:
- discharges to waterways are minimised and do not compromise quality:
- land use practices are monitored and best practice approaches are required:
- agricultural stock is excluded from all waterways in catchments where irrigated farming is practised and all lowland streams:
- where acclimatised wildlife in lowland streams cause contamination, they are appropriately managed:
- degraded waahi taonga are enhanced to restore tangata whenua cultural wellbeing.

Part 2**Status and preparation of Canterbury Water
Management Strategy Strategic Framework
November 2009**

- 1 The vision and principles of the CWMS, as set out in Part 1, are reproduced from the Canterbury Water Management Strategy Strategic Framework, November 2009 (CWMS).

Part 2—*continued*

- 2 The preparation of the CWMS was supervised by a multi-stakeholder Steering Group under the overall leadership of the Canterbury Mayoral Forum.
 - 3 The membership of the Canterbury Mayoral Forum and of the Steering Group is set out in Annex A of the CWMS.
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Schedule 2

Transitional provisions

ss 46, 60

Part 1

Transitional provisions for certain Canterbury WCO applications

Processing of applications if hearing not commenced

1 Process applying if hearing not commenced

Clauses 2 and 3 apply if ECan,

- (a) at any time after the commencement day, receives a WCO application from the Minister under section 48(1)(b)(ii); but
- (b) by the day before the resumption day, has not commenced to hear that application under subpart 3 of Part 3.

2 Preliminary responsibilities of ECan and Minister

- (1) ECan must, as soon as practicable,
 - (a) return the application and any submissions received on it to the Minister; and
 - (b) give public notice and a notice to the applicant and any submitters that the application
 - (i) has been returned to the Minister; and
 - (ii) is to be dealt with under Part 9 of the RMA by a special tribunal.
- (2) When the Minister receives the application and any related submissions under subclause (1), the Minister must
 - (a) appoint a special tribunal under section 202 of the RMA to hear and report on the application; and
 - (b) forward the application and copies of any submissions received from ECan to the special tribunal.

3 Role of special tribunal

- (1) The special tribunal must, as soon as it is appointed, notify the applicant that the applicant may
 - (a) revise the application made under subpart 3 of Part 3 to take into account the matters that are relevant to the con-

- sideration of the application under Part 9 of the RMA;
and
- (b) within 30 working days of the date of the notice, submit a revised application to the special tribunal.
- (2) At the end of the 30-working-day period, the special tribunal must
- (a) comply with section 204 of the RMA in relation to the application or revised application, if one is received; and
 - (b) also serve on each person who made a submission on the application under subpart 3 of Part 3
 - (i) a notice that complies with section 204(2) of the RMA; and
 - (ii) advice that, unless a new submission is received in accordance with that notice, the special tribunal will consider the submission as if it had been submitted under section 205 of the RMA (as applied by section 51).

*Processing of applications if hearing
commenced*

4 Process applying if hearing commenced

- (1) This clause applies if, on or before the resumption day, ECan has commenced a hearing on an application for a Canterbury WCO made under subpart 3 of Part 3, but has not completed the process under those provisions.
- (2) Despite the expiry and repeal of Schedule 1 and certain provisions of subpart 3 of Part 3 by or under section 6, those provisions continue to apply to that application as if they were still in force.

Further transitional matters

5 Committees and delegations

The expiry and repeal of the provisions of subpart 3 of Part 3 do not affect the continuation, on the resumption day, of

- (a) the business or membership of any committee or other subordinate decision-making body of ECan appointed on or after the replacement day; or

- (b) delegations by ECan made after the replacement day.

Part 2 Hurunui WCO application

6 Interpretation

In this Part of this schedule,

Hurunui report means the report on the Hurunui WCO application by a special tribunal under section 208 of the RMA dated 14 August 2009

Hurunui River means the waters of that part of the Hurunui River in respect of which the Hurunui WCO application applies, namely

- (a) the main stem of the upper Hurunui River and all of its lakes, tributaries and contributing waters (including hydraulically connected groundwaters), from its source in the Main Divide of the Southern Alps down to immediately above its confluence with the Mandamus River (at or about NZMS 260 M33 736238) (**Upper Hurunui Waters**); and
- (b) the main stem of the lower Hurunui River from immediately above its confluence with the Mandamus River (at or about NZMS 260 M33 736238) down to the sea (**Lower Hurunui River**)

Hurunui WCO application means the WCO application in respect of the Hurunui River made under section 201 of the RMA on 30 August 2007 jointly by the New Zealand Fish and Game Council, the North Canterbury Fish and Game Council, and the New Zealand Recreational Canoeing Association

revised application means a revised application (if any) for a Hurunui WCO submitted under clause 9(b).

7 Jurisdiction of Environment Court removed in relation to Hurunui WCO application

Despite anything in the RMA or any other enactment, on and from the commencement date, the Environment Court does not have jurisdiction to conduct, or to continue to conduct, an inquiry in respect of the Hurunui report.

Part 2—*continued*

- 8 Minister to forward Hurunui WCO application to ECan**
Not later than 20 working days after the commencement day, the Minister must forward to ECan
- (a) a copy of the Hurunui WCO application; and
 - (b) a copy of all submissions made to the special tribunal under section 205 of the RMA in respect of that application.
- 9 Notice to applicant and submitters**
As soon as practicable after ECan has received the documents from the Minister under clause 8, ECan must give notice in writing to the applicant and the submitters that,
- (a) by virtue of section 46 and clause 7, the Environment Court has no jurisdiction in relation to the Hurunui report; and
 - (b) the applicant may, not later than 30 working days after the date of the notice, submit a revised application to take into account the matters that must be considered under sections 50 and 57; and
 - (c) on the expiry of that 30-working-day period, submitters may make a submission on any revised application submitted under paragraph (b); and
 - (d) ECan will consider and report on the revised application, if there is one, or otherwise on the Hurunui WCO application, in accordance with this clause and clauses 10 to 14.
- 10 Notice to submitters**
As soon as practicable after the expiry of 30 working days from the date of the notice given under clause 9, ECan must notify submitters in writing
- (a) that a revised application has been submitted, setting out
 - (i) a description of the revised application; and
 - (ii) where the revised application and any relevant information held by ECan may be viewed; and
 - (iii) in relation to any revised application, that the submitters have 30 working days in which to

Part 2—*continued*

make a written submission on the revised application and serve it on

(A) the applicant; and

(B) ECan; and

- (iv) that unless a submission is received in accordance with clause 9(c), ECan will consider the submission on the Hurunui WCO application made by the submitter to the special tribunal as if it were a submission made on the revised application; or
- (b) if no revised application is received by the due date, that
- (i) no revised application has been submitted; and
- (ii) the submissions already lodged with ECan will be considered in relation to the original application.

*Process for ECan's consideration***11 Time limits, further information, and submissions**

- (1) The provisions of the RMA set out in subclause (2) apply to ECan's consideration of the Hurunui WCO application or any revised application as if
- (a) every reference to a consent authority were a reference to ECan; and
- (b) every reference to an application for a resource consent were a reference to the Hurunui WCO application or any revised application; and
- (c) every reference to a resource consent were a reference to a water conservation order in respect of the Hurunui River; and
- (d) the reference in section 96(6)(a) of the RMA to the time allowed by section 97 of that Act were a reference to the time allowed by clause 10.
- (2) The provisions of the RMA are
- (a) section 37 (which relates to waiver and extension of time limits); and
- (b) section 92 (which relates to further information that may be requested); and

Part 2—*continued*

- (c) section 96(5) and (6) (which relate to the making of submissions); and
 - (d) section 98 (which requires the applicant to be advised of submissions).
- (3) A person who makes a submission opposing the making of a WCO in respect of the Hurunui River must specify the reasons why the person considers that the proposed order is not justified in terms of sections 50 and 57.
- (4) ECan may by written notice to a submitter require further information that ECan considers necessary in relation to a submission.

12 Right to make submission or be heard

No person may make a submission to, or be heard by, ECan under this Part other than

- (a) the applicant; or
- (b) persons who made a submission to the special tribunal hearing the Hurunui WCO application.

13 Hearing

- (1) ECan must conduct a hearing into the Hurunui WCO application or revised application.
- (2) Sections 39 to 42, 99 to 100, and 101(1) to (3) of the RMA apply with the necessary modifications to a hearing under this clause, as if every reference
- (a) to a consent authority were a reference to ECan; and
 - (b) to a resource consent were a reference to a water conservation order.
- (3) Without limiting the provisions referred to in subclause (2), a hearing must be held in public at a place that is near the Hurunui River, as determined by ECan.

14 Consideration and reporting by ECan

- (1) After receiving any information and conducting any hearing that it considers necessary, ECan must

Part 2—*continued*

- (a) consider the Hurunui WCO application or revised application in accordance with section 50; and
 - (b) report on the application; and
 - (c) give notice of that report.
- (2) Section 208 of the RMA applies to the report and its notification as if
- (a) every reference to a special tribunal were a reference to ECan; and
 - (b) section 208(2)(c) of that Act excluded the reference to the regional council.

*Further transitional matters***15 Application of provisions of subpart 3 of Part 3 to Hurunui WCO application**

The following provisions of subpart 3 of Part 3 apply to the Hurunui WCO application, ECan's report on it, and to the making or declining of an order in respect of the Hurunui River as if they referred to that application, report, or order, as the case may be:

- (a) sections 52 to 55, which relate to appeals; and
 - (b) section 56, which relates to the making or declining of an order; and
 - (c) section 57, which provides for the scope and effect of an order; and
 - (d) section 59, which relates to the delegation of functions, powers, and duties by ECan.
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Legislative history

30 March 2010	Introduction (Bill 1301), first reading, second reading, committee of the whole House, third reading
12 April 2010	Royal assent

This Act is administered by the Ministry for the Environment.
