

Health (Fluoridation of Drinking Water) Amendment Bill

Government Bill

As reported from the Health Committee

Commentary

Recommendation

The Health Committee has examined the Health (Fluoridation of Drinking Water) Amendment Bill and recommends that it be passed with the amendments shown.

Introduction

The bill seeks to amend Part 2A of the Health Act 1956 by empowering district health boards (DHBs) to decide and then direct territorial authorities to fluoridate or not fluoridate drinking water supplies in their areas. Territorial authorities currently make this decision. This has resulted in inconsistent decisions about fluoridation throughout New Zealand.

About 54 percent of the New Zealand population receives fluoridated water. This level has not increased in the past 15 years. Giving DHBs the power to direct territorial authorities whether or not to fluoridate water would ensure that public health is a major factor in decision-making.

When deciding whether to make a direction to fluoridate or not to fluoridate, DHBs would need to consider the scientific evidence about how the addition of fluoride to water affects the prevalence and severity of dental decay, and whether the benefits of adding fluoride outweigh the financial costs. They would need to consider a population's oral health status, population numbers, and financial costs and savings, including ongoing maintenance and monitoring costs.

Part 2 of the bill (Miscellaneous amendments) seeks to make minor corrections to the Health Act. These amendments, which are unrelated to fluoride, relate to the power of the Governor-General in Council to amend Schedules, the disclosure of health information, and the giving of notice by medical laboratories about cases of disease during an epidemic.

This commentary covers the main amendments that we recommend to the bill. It does not discuss minor, technical, or consequential amendments.

Submissions relating to the advantages and disadvantages of water fluoridation

We acknowledge that the majority of submitters expressed concern about the safety and efficacy of water fluoridation. Medical and dental associations and representative bodies, and most doctors and dentists, spoke in support of fluoridating water. However, we consider these issues beyond the subject matter of the bill, which is about giving DHBs the power to make a direction about fluoridation.

Definition of local authority drinking-water supplier

Clause 6 of the bill as introduced, which would amend section 69G of the Act, defines a local government drinking-water supplier as a local government organisation as defined in section 124 of the Local Government Act 2002.

This definition excludes bulk water suppliers. We therefore recommend replacing the definition of “local government drinking-water supplier” with “local authority drinking-water supplier”. This would be defined as a drinking-water supplier which is, or is controlled by, a local authority as defined in section 5(1) of the Local Government Act.

We also recommend replacing all “local government drinking-water supplier” references in the bill with “local authority drinking-water supplier”.

Local authorities still able to fluoridate drinking water

We consider that the bill leaves it unclear whether a local authority drinking-water supplier could still choose to add fluoride to the water, in the absence of a direction from a DHB on whether or not to fluoridate. We therefore recommend amending new Schedule 1AA, clause 2 to clarify that they could do so at their discretion.

Directions to cover drinking water supplies

New section 69ZJA, inserted by clause 8 of the bill as introduced, outlines when a DHB could make a direction about whether or not to add fluoride to drinking water. The bill would not require DHBs to make a direction covering their entire geographical area. However, for clarity, we recommend amending section 69ZJA(1) to specify that the DHB direction may be for a specific drinking-water supply.

As a consequence, we recommend amending section 69ZJA(4) to allow DHBs to decide, at their discretion, whether or not specific water supplies should be considered regarding fluoridation.

We also recommend amending section 69ZJA(2) to clarify that, when DHBs are considering the cost-benefit analysis of adding fluoride to the drinking water, and must take into account the number of people living in the area, the total resident population would only be those who would receive water from the drinking-water supply.

Drinking-water supplies shared across DHBs

Clause 8 of the bill as introduced (new section 69ZJA(3)) would require DHBs to consult each other if a drinking-water supplier supplies water to an area covered by more than one DHB. We recommend amending this section to make it clear that DHBs would only be required to consult other DHBs if the drinking-water supply is shared by their resident populations.

Content of direction to add fluoride

In clause 8, we recommend moving section 69ZJA(4) to a new section, 69ZJB, which would outline the content of a direction to fluoridate.

As well as specifying the date by which a supplier must comply with the direction, we recommend inserting new subsection 69ZJB(2), so the direction must specify the level at which fluoride be added. This was addressed in section 69ZJA(1) of the bill as introduced.

We also recommend inserting new subsection 69ZJB(3) to specify that a DHB direction could allow the drinking-water supplier to supply, at one or more specified sites, water to which fluoride has not been added.

Requirement for drinking-water supplier to comply with direction

As a result of our proposed insertion of new section 69ZJB, discussed above, we recommend renumbering section 69ZJB in clause 8 of the bill as introduced as new section 69ZJE.

We also recommend inserting new subsections (2) and (3) in section 69ZJE to require the local authority drinking-water supplier to take all practicable steps to ensure that the specified level of fluoride is present in the water before it reaches the point of supply. The exception to this would be when a DHB direction allowed fluoride not to be added at one or more specified sites, as provided for in our proposed new section 69ZJB(3).

Engagement with local authorities and communities

In the bill as introduced, there is no explicit requirement for DHBs to consider the views of the drinking-water supplier.

We recommend amending the bill to ensure that DHBs engage with the local authority drinking-water supplier when considering whether or not to fluoridate. New section 69ZJC, inserted by clause 8, would specify that, before making a direction, a DHB must invite written comments from the local authority about the estimated cost of providing fluoride and when it would be able to comply with the direction. The DHB would have to consider any comments by the local authority and respond to them when making the direction.

We recommend inserting new section 69ZJD in clause 8 to make it clear that local authorities would not be required to consult their communities about a DHB's direc-

tion to fluoridate or its invitation to comment. We consider this amendment necessary because the DHB would have the ultimate decision-making power about fluoridation.

Funding for water fluoridation

We note that there is no provision in the bill for financial assistance to local authorities that receive a DHB direction to fluoridate. Some of us are concerned about an issue of moral hazard arising from the DHBs making a decision that will impose costs on local authorities and ratepayers. We suggest that the Government consider whether it intends to contribute funding towards the costs of establishing fluoridated water supplies.

Appendix

Committee process

The Health (Fluoridation of Drinking Water) Amendment Bill was referred to the committee on 6 December 2016. The closing date for submissions was 2 February 2017. We received and considered submissions from 1,107 interested groups and individuals. We heard oral evidence from 145 submitters.

We received advice from the Ministry of Health.

Committee membership

Simon O'Connor (Chairperson)

Dr David Clark

Sarah Dowie

Julie Anne Genter

Barbara Kuriger

Melissa Lee

Dr Shane Reti

Barbara Stewart

Poto Williams

Ria Bond replaced Barbara Stewart for this item of business.

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Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Peter Dunne

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Health (Fluoridation of Drinking Water) Amendment Act **2016**.
- 2 Commencement**
This Act comes into force on the 28th day after the date on which it receives the Royal assent. 5
- 3 Principal Act**
This Act amends the Health Act 1956 (the **principal Act**).

- Part 1**
- Amendments relating to drinking water** 10
- 4 New section 2A inserted (Transitional, savings, and related provisions)**
After section 2, insert:
- 2A Transitional, savings, and related provisions**
The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms. 15
- 5 Section 69A amended (Purpose)**
After section 69A(2), insert:
- (3) This Part also—
- (a) enables district health boards to direct a local ~~government authority~~ drinking-water supplier to add fluoride or not to add fluoride to drinking water supplied by that supplier; and 20
- (b) requires the local ~~government authority~~ drinking-water supplier to comply with the direction.

6 Section 69G amended (Interpretation)

In section 69G, insert in its appropriate alphabetical order:

~~local government drinking-water supplier~~ means a drinking-water supplier who is a local government organisation (as defined in section 124 of the Local Government Act 2002)

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local authority drinking-water supplier means a drinking-water supplier who is, or is controlled by, a local authority (as defined in section 5(1) of the Local Government Act 2002)

7 Section 69O amended (Minister may issue, adopt, amend, or revoke drinking-water standards)

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(1) In section 69O(3)(b), delete “; but”.

(2) Repeal section 69O(3)(c).

8 New sections 69ZJA and ~~69ZJB~~ to 69ZJE and cross-heading inserted

After section 69ZJ, insert:

Fluoridation

15

69ZJA District health boards may direct local ~~government authority~~ drinking-water suppliers to add fluoride or not to add fluoride to ~~drinking water~~ drinking-water supplies

(1) A district health board may direct a local ~~government authority~~ drinking-water supplier—

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(a) to add fluoride to drinking water supplied by that supplier within the district health board’s geographical area at a level specified by the district health board; or from a drinking-water supply—

(i) that is owned by the local authority drinking-water supplier; and

(ii) from which drinking water is supplied to the district health board’s resident population (or part of that population); or

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(b) not to add fluoride to ~~that drinking water supplied by that supplier within the district health board’s geographical area.~~

(2) ~~In deciding whether to make~~Before making a direction, the district health board must consider—

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(a) scientific evidence on the effectiveness of adding fluoride to drinking water in reducing the prevalence and severity of dental decay; and

(b) whether the benefits of adding fluoride to the drinking water outweigh the financial costs, taking into account—

(i) the state of the oral health of its resident population; and

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- (ii) ~~the number of its resident population to whom the local government drinking-water supplier supplies drinking water who receive water from the drinking-water supply; and~~
- (iii) the likely financial cost and savings of adding fluoride to the ~~drinking-water supply~~ drinking water, including any additional financial costs of ongoing management and monitoring. 5
- (3) ~~If a local government drinking-water supplier supplies drinking water within more than 1 geographical area and any of the affected district health boards wish to make a direction~~If the drinking-water supply also supplies drinking water to the resident population of another district health board (or part of that population),— 10
- (a) all affected district health boards must consider the matters in **subsection (2)** together, as if the resident population of each district health board were 1 resident population; and
- (b) an affected district health board must not make a direction unless all affected district health boards agree. 15
- (4) ~~A direction must specify a date by which the local government drinking-water supplier must comply with the direction, which must not be earlier than the date by which the district health board considers it would be reasonably practicable for the supplier to comply.~~ 20
- (4) A district health board's decision to consider, or not to consider, making a direction in respect of a drinking-water supply is not relevant to whether the district health board should consider making a direction in respect of a different drinking-water supply.
- (5) A district health board must publish a direction and the reasons for the decision to make the direction on the district health board's Internet site as soon as practicable after making the direction. 25
- (6) A direction is not a disallowable instrument for the purposes of the Legislation Act 2012 and does not have to be presented to the House of Representatives under section 41 of that Act. 30
- (7) ~~In this section,—~~
- geographical area**, in relation to a district health board, means the geographical area specified for that district health board in Schedule 1 of the New Zealand Public Health and Disability Act 2000
- resident population** has the meaning given in section 6(1) of the New Zealand Public Health and Disability Act 2000. 35
- (7) In this section, **resident population** has the meaning given in section 6(1) of the New Zealand Public Health and Disability Act 2000.

69ZJB Local government drinking-water supplier must comply with direction

~~A local government drinking-water supplier who receives a direction under **section 69ZJA** must comply with the direction.~~

69ZJB Contents of directions

- (1) A direction must specify a date by which the local authority drinking-water supplier must comply with the direction, which must not be earlier than the date by which the district health board considers it would be reasonably practicable for the supplier to comply. 5
- (2) A direction to add fluoride to drinking water must specify the level at which fluoride must be added. 10
- (3) A direction to add fluoride to drinking water may allow the local authority drinking-water supplier to supply, at 1 or more specified sites, water to which fluoride has not been added.

69ZJC Engagement with local authority

- (1) Before making a direction to add fluoride to drinking water, a district health board must invite written comments from the relevant local authority on— 15
 - (a) the estimated financial cost of adding fluoride to the drinking water, including any additional costs of ongoing management and monitoring; and
 - (b) the date by which the local authority drinking-water supplier would be able to comply with a direction. 20
- (2) The district health board must give the local authority at least 40 working days from the issuing of the invitation to provide its comments.
- (3) If the local authority provides comments within the specified time, the district health board must— 25
 - (a) have regard to the comments; and
 - (b) if the district health board decides to make a direction, summarise and respond to the comments in the reasons for the decision published under **section 69ZJA(5)**.

69ZJD No duty for local authority to consult 30

A local authority who receives a direction under **section 69ZJA** or an invitation to comment under **section 69ZJC** is not required to consult on any matter related to the direction or invitation.

69ZJE Local authority drinking-water supplier must comply with direction

- (1) A local authority drinking-water supplier who receives a direction under **section 69ZJA** must comply with the direction. (See Part 1 of Schedule 1AA for the obligations of local authority drinking-water suppliers who do not receive a direction.) 35

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- (2) If the direction requires the local authority drinking-water supplier to add fluoride to drinking water, the local authority drinking-water supplier must take all practicable steps to ensure that the specified level of fluoride is present in the water immediately before it reaches the point of supply.
- (3) **Subsection (2)** does not apply to a point of supply that is a site specified under **section 69ZJB(3)**. 5

9 Section 69ZZR amended (Offences against sections in this Part)

After section 69ZZR(1)(f), insert:

- (fa) ~~section 69ZJB~~ **69ZJE** (local government authority drinking-water supplier must comply with direction): 10

10 New Schedule 1AA inserted

Insert the **Schedule 1AA** set out in the **Schedule** of this Act as the first schedule to appear after the last section of the principal Act.

Part 2

Miscellaneous amendments 15

11 Section 3 amended (Power of Governor-General in Council to amend Schedules)

In section 3(b), delete “, or the list of chemical works set out in Schedule 4, or the list of noxious or offensive gases set out in Schedule 5, the name or description of any trade, business, manufacture, undertaking, works, gas, or fumes,”. 20

12 Section 22C amended (Disclosure of health information)

In section 22C(2)(g)(i), delete “or the Hospitals Act 1957”.

13 Section 74B amended (Medical laboratories may be required to give notice of cases of disease during epidemic) 25

In section 74B(1), after “section 8”, insert “of the Health Amendment Act 2006”.

Schedule
New Schedule 1AA inserted

s 10

Schedule 1AA
Transitional, savings, and related provisions

5

s 2A

Part 1
Provisions relating to Health (Fluoridation of Drinking Water)
Amendment Act 2016

- 1 Suppliers must continue to add fluoride to drinking water** 10
- (1) This clause applies to a local ~~government authority~~ drinking-water supplier who, immediately before this clause commences, adds fluoride to drinking water ~~supplied by that supplier within a district health board's geographical area in a drinking-water supply.~~
- (2) The local ~~government authority~~ drinking-water supplier must continue to add fluoride to the water unless directed not to by the relevant district health board. 15
- (3) A local ~~government authority~~ drinking-water supplier who contravenes **sub-clause (2)** commits an offence.
- (4) Sections 69ZZS and 69ZZU to 69ZZX apply to an offence against this section as if it were an offence against section 69ZZR(1). 20
- (5) ~~In this clause, **geographical area**, in relation to a district health board, means the geographical area specified for that district health board in Schedule 1 of the New Zealand Public Health and Disability Act 2000.~~
- 2 Suppliers may add fluoride to drinking water in absence of direction**
- (1) This clause applies to a local authority drinking-water supplier who, — 25
- (a) immediately before this clause commences, does not add fluoride to drinking water supplied by that supplier; and
- (b) has never received a direction to add fluoride or not to add fluoride to the drinking water.
- (2) The local authority drinking-water supplier may, at its discretion, add fluoride to the water. 30

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Legislative history

17 November 2016
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Introduction (Bill 208–1)
First reading and referral to Health Committee

Wellington, New Zealand:

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