

Health (Fluoridation of Drinking Water) Amendment Bill

Government Bill

Explanatory note

General policy statement

The Health (Fluoridation of Drinking Water) Bill amends Part 2A of the Health Act 1956 by inserting a power for DHBs to make decisions and give directions about the fluoridation of local government drinking water supplies in their areas.

This power replaces territorial local authorities' decision-making responsibilities about fluoridation of drinking water. Transferring decision-making to DHBs is expected to enable extended fluoridation coverage, which would improve the status of oral health in New Zealand.

In deciding whether to make a direction, DHBs will be required to consider scientific evidence and whether the benefits of adding fluoride to drinking water outweigh the financial costs, taking into account local oral health status, population numbers, and financial cost and savings.

The Bill also provides 2 offence provisions, which make it an offence for a local government drinking water supplier not to comply with DHB directions on whether a water supply should be fluoridated, and for a local government drinking water supplier to discontinue fluoridating their water where they are already doing so, unless directed not to by the relevant DHB.

Departmental disclosure statement

The Ministry of Health is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2016&no=208>

Regulatory impact statement

The Ministry of Health produced a regulatory impact statement on 21 March 2016 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <https://www.health.govt.nz/about-ministry/legislation-and-regulation/regulatory-impact-statements/transferring-decision-making-fluoridation-drinking-water-local-authorities-district-health-boards>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 states the Bill's Title.

Clause 2 specifies the Bill's commencement date. The Bill comes into force on the 28th day after the date on which it receives the Royal assent.

Clause 3 provides that the Bill amends the Health Act 1956 (the **principal Act**).

Part 1

Amendments relating to drinking water

Clause 4 inserts *new section 2A*, which relates to transitional, savings, and related provisions (set out in *new Schedule 1AA*, which *clause 9* inserts into the principal Act).

Clause 5 amends section 69A, which sets out the purpose of Part 2A of the principal Act. The amendment adds *new subsection (3)*, which states that Part 2A also enables district health boards to make fluoridation directions and requires local government drinking-water suppliers to comply with those directions.

Clause 6 amends section 69G, which is the interpretation section for Part 2A. The amendment inserts a definition of local government drinking-water supplier.

Clause 7 amends section 69O, which allows the Minister to issue, adopt, amend, or revoke drinking-water standards. The amendment repeals section 69O(3)(c), which states that drinking water standards must not include any requirement that fluoride be added to drinking water.

Clause 8 inserts *new sections 69ZJA and 69ZJB*.

New section 69ZJA allows a district health board to direct a local government drinking-water supplier to add or to not add fluoride to drinking water supplied by that supplier within the district health board's geographical area. In deciding whether to make a direction, a district health board must consider the matters set out in *new section 69ZJA(2)*. A district health board that makes a direction must publish the 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.

New section 69ZJB requires local government drinking-water suppliers to comply with directions issued under *new section 69ZJA*.

Clause 9 amends section 69ZZR, which sets out offences under Part 2A. The amendment adds *new section 69ZJB* to the list of provisions in section 69ZZR(1), meaning that a breach of *new section 69ZJB* carries a maximum penalty of \$200,000 (and, in the case of a continuing offence, a further fine of up to \$10,000 for every day that the offence continues).

Clause 10 inserts *new Schedule 1AA* into the principal Act. *New Schedule 1AA*, which is found in the Schedule to this Bill, sets out transitional, savings, and related provisions.

Part 2

Miscellaneous amendments

Clauses 11 to 13 make unrelated minor amendments to the principal Act.

Clause 11 amends section 3 to delete references to schedules of the principal Act that have been repealed.

Clause 12 amends section 22C to delete a reference to a repealed Act.

Clause 13 amends section 74B to clarify that the reference in section 74B(1) to section 8 refers to section 8 of the amendment Act that inserted section 74B, rather than to section 8 of the principal Act.

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 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 drinking-water supplier to comply with the direction.
- 6 Section 69G amended (Interpretation)**
In section 69G, insert in its appropriate alphabetical order: 25
- 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)

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

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

8 New sections 69ZJA and 69ZJB and cross-heading inserted

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After section 69ZJ, insert:

Fluoridation

69ZJA District health boards may direct local government drinking-water supplier to add fluoride or not to add fluoride to drinking water

- (1) A district health board may direct a local government drinking-water supplier—
 - (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
 - (b) not to add fluoride to drinking water supplied by that supplier within the district health board’s geographical area.
- (2) In deciding whether to make a direction, the district health board must consider—
 - (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
 - (ii) the number of its resident population to whom the local government drinking-water supplier supplies drinking water; and
 - (iii) the likely financial cost and savings of adding fluoride to the drinking-water supply, including any additional financial costs of ongoing management and monitoring.
- (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,—
 - (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.
- (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.
- (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. 5
- (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.
- (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 10
- 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** 15
- A local government drinking-water supplier who receives a direction under **section 69ZJA** must comply with the direction.
- 9 Section 69ZZR amended (Offences against sections in this Part)**
- After section 69ZZR(1)(f), insert:
- (fa) **section 69ZJB** (local government drinking-water supplier must comply with direction): 20
- 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** 25
- Miscellaneous amendments**
- 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,”. 30
- 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)

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

Schedule
New Schedule 1AA inserted

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Schedule 1AA
Transitional, savings, and related provisions

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s 2A

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

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|----------|---|----|
| 1 | Suppliers must continue to add fluoride to drinking water | 10 |
| (1) | This clause applies to a local government 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. | |
| (2) | The local government 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 drinking-water supplier who contravenes subclause (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). | |
| (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. | 20 |