

Departmental Disclosure Statement

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| Health (Fluoridation of Drinking Water) Amendment Bill |
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Health.

The Ministry of Health certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

2 November 2016.

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Part One: General Policy Statement

The Health (Fluoridation of Drinking Water) Bill amends Part 2A of the Health Act 1956 by inserting a power for District Health Boards (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 two 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.

Part Two: Background Material and Policy Information

Published reviews or evaluations

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| <p>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</p> | <p>YES</p> |
| <p>The World Health Organization and other international health authorities have endorsed water fluoridation as the most effective public health measure for the prevention of tooth decay.</p> <p>The safety and efficacy of water fluoridation has been evaluated many times, and systematic reviews consistently find that it prevents and reduces dental decay and does not cause harmful health effects. This includes a study recently published by the Cochrane Collaboration:</p> <p>Iheozor-Ejiofor Z, Worthington HV, Walsh T, O'Malley L, Clarkson JE, Macey R, Alam R, Tugwell P, Welch V, and Glenny AM. 2015. Water fluoridation for the prevention of dental caries. <i>Cochrane Database of Systematic Reviews</i>: Issue 6. Access: http://onlinelibrary.wiley.com/doi/10.1002/14651858.CD010856.pub2/full</p> <p>In 2014 the Prime Minister's Chief Science Advisor and the Royal Society of New Zealand, assisted by a panel of experts, conducted a systematic analysis of the local and international scientific evidence for and against fluoridation of water supplies. This report, <i>Health effects of water fluoridation: A review of the scientific evidence</i>, can be found on the Ministry of Health's website alongside other research and reviews: http://www.health.govt.nz/our-work/preventative-health-wellness/fluoridation/fluoridation-resources/fluoridation-research-and-review</p> <p>There have also been many studies published on the evidence for the cost-effectiveness of water fluoridation. In particular:</p> <p>Moore D and Poynton M. 2015. <i>Review of the benefits and costs of water fluoridation in New Zealand</i>. Wellington: Sapere Research Group.</p> <p>National Fluoridation Information Service. 2013. <i>NFIS Advisory: A review of the current cost benefit of community water fluoridation interventions</i>. National Fluoride Information Service.</p> <p>These studies can be found on the Ministry of Health's website at http://www.health.govt.nz/our-work/preventative-health-wellness/fluoridation/proposed-legislative-changes-decision-making-fluoridation-drinking-water-supplies and http://www.health.govt.nz/our-work/preventative-health-wellness/fluoridation/national-fluoridation-information-service</p> | |

Relevant international treaties

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| <p>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</p> | <p>NO</p> |
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Regulatory impact analysis

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| 2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill? | YES |
| <p>The <i>Regulatory Impact Statement: Transferring decision-making on the fluoridation of drinking-water from local authorities to district health boards</i> was prepared by the Ministry of Health for consideration by the Social Policy Committee on 30 March 2016 and met requirements. The report can be accessed on the Ministry of Health's website at http://www.health.govt.nz/our-work/preventative-health-wellness/fluoridation/proposed-legislative-changes-decision-making-fluoridation-drinking-water-supplies.</p> | |

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| 2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements? | NO |
| <p>Quality assurance was provided by a Ministry of Health Committee, <i>Papers and Regulatory Committee</i>, who were not directly involved in preparing the Regulatory Impact Statement.</p> | |

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| 2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements? | NO |
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Extent of impact analysis available

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| 2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill? | NO |
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| 2.5. For the policy to be given effect by this Bill, is there analysis available on: | |
| (a) the size of the potential costs and benefits? | YES |
| (b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth? | NO |
| <p>A report by the Sapere Research Group (2015) commissioned by the Ministry of Health estimates the total capital and operating costs of extending fluoridation to populations not receiving fluoridated water to be \$144 million over a 20-year period, including a significant upfront capital investment and smaller annual operating costs.</p> <p>The Sapere report estimates that extending water fluoridation to those areas that do not currently have fluoridation would be associated with net savings of over \$600 million over twenty years with most of the savings to consumers and a small amount to Vote Health. This estimate takes into account the lower cost-effectiveness of fluoridating water at smaller water treatment plants which represent a greater proportion of the currently non-fluoridated water supplies. The conclusion that fluoridation and extended fluoridation would result in net savings was shown to be robust under a range of assumptions.</p> <p>The Sapere report can be found on the Ministry of Health's website at http://www.health.govt.nz/our-work/preventative-health-wellness/fluoridation/proposed-legislative-changes-decision-making-fluoridation-drinking-water-supplies</p> | |

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| 2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by: | |
| (a) the level of effective compliance or non-compliance with applicable obligations or standards? | NO |
| (b) the nature and level of regulator effort put into encouraging or securing compliance? | NO |
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Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

The Bill affects domestic water supplies only, and does not make any changes to rules around the trade of fluoride.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

District Health Boards (DHBs) will be given the power to make decisions about fluoridation for local government water supplies. DHBs fall under the Public Health and Disability Act 2000, which recognises and respects the principles of the Treaty of Waitangi and provides mechanisms for Māori to contribute to decision-making in Part 3.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

YES

The Ministry of Justice advised the Attorney-General on 2 November 2016 that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act 1990. In reaching that conclusion, they considered the consistency of the Bill with the rights set out in s10 (right not to be subjected to medical or scientific experimentation), s11 (right to refuse to undergo medical treatment) and s25(c) (right to be presumed innocent until proven guilty).

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:

(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?

YES

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

NO

The Bill provides that it is an offence for a drinking water supplier not to comply with DHB directions on whether or not a water supply should be fluoridated ("Offence 1"). This offence, under s69ZZR(1) of the Health Act 1956, would be a strict liability offence, with a defence available. The maximum penalty, set out at s69ZZV(1), is a \$200,000 fine plus an ongoing fine of \$10,000 per day or part day during which the offence continues; with additional fines under s69ZZW where the offence is committed in pursuit of commercial gain.

The Bill also provides that it is an offence for a drinking water supplier who is already fluoridating their water to discontinue doing so, unless directed by the relevant DHB ("Offence 2"). Sections 69ZZS and 69ZZU to 69ZZX apply to this offence as if it was an offence against s69ZZR(1) of the Health Act 1956, which would be a strict liability offence, with a defence available. The penalties for this offence are the same as those for Offence 1.

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| 3.4.1. Was the Ministry of Justice consulted about these provisions? | YES |
| <p>The Ministry of Justice was notified that provisions for offences were being included in the Bill.</p> <p>In respect of Offence 1, they responded that “for the most part [...] (they were) comfortable with the proposed new offence for contravening a DHB direction to fluoridate drinking water. Generally, strict liability offences are undesirable, however, this is an extension of an existing regime for drinking-water suppliers and promotes internal legislative consistency”. However, they asked that a rationale be provided for placing this offence within the current regime of strict liability offences and considerable fines. The Ministry of Health provided the rationale that this offence reverses the burden of proof as the territorial local authority will be best placed to explain why they did not follow a direction (where they did not). The Ministry of Justice was satisfied with this response.</p> <p>In respect of Offence 2, the Ministry of Justice were comfortable with the proposed offence. Similar to Offence 1, they said that “generally strict liability offences are undesirable, however, this is an extension of an existing regime for drinking-water suppliers and promotes internal legislative consistency”. They agreed that the offence appears to be necessary in order for DHBs to enforce their powers to direct drinking water suppliers to fluoridate the local drinking water, and accommodates the transition of power from territorial authorities to DHBs with regard to water fluoridation.</p> | |

Privacy issues

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| 3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information? | NO |
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External consultation

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| 3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill? | NO |
| <p>Public consultation was not carried out during the development of the Regulatory Impact Statement as Government had not yet indicated whether it would transfer decision-making responsibility from territorial local authorities. Wider consultation on the proposal could occur through the Select Committee process following the introduction of the amendment bill.</p> | |

Other testing of proposals

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| 3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete? | YES |
| <p>A draft of the Bill has been tested with the Ministry of Health's DHB Working Group, which comprises representatives from DHBs. The group was established to help develop resources for DHB decision-making and ensure workability of the Bill. The group has expressed support for the transfer of decision-making on fluoridation to DHBs, and supports the wording in the Bill.</p> <p>Local Government New Zealand has also been consulted and, noting the Government's intention to consider the question of funding prior to implementation, supports the transfer of decision-making on fluoridation from territorial local authorities to DHBs and remains of the position that funding should sit with the decision-maker (DHBs).</p> | |

Part Four: Significant Legislative Features

Compulsory acquisition of private property

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| 4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property? | NO |
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Charges in the nature of a tax

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| 4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax? | NO |
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Retrospective effect

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| 4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively? | NO |
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Strict liability or reversal of the usual burden of proof for offences

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| 4.4. Does this Bill: | |
| (a) create or amend a strict or absolute liability offence? | YES |
| (b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding? | YES |
| See response to 3.4 and 3.4.1 above. | |

Civil or criminal immunity

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| 4.5. Does this Bill create or amend a civil or criminal immunity for any person? | NO |
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Significant decision-making powers

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| 4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests? | NO |
| The Bill transfers decision-making powers about fluoridation of drinking water from territorial local authorities to DHBs. However, this will not have a significant impact on a person's rights, obligations or interests as it is transferring decision-making from one public body to another. | |

Powers to make delegated legislation

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| 4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation? | NO |
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| 4.8. Does this Bill create or amend any other powers to make delegated legislation? | NO |
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Any other unusual provisions or features

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| 4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment? | NO |
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